



# भारत का राजपत्र The Gazette of India

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प्राधिकार से प्रकाशित  
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सं. 52] नई दिल्ली, दिसम्बर 24—दिसम्बर 30, 2023, शनिवार/पौष 3—पौष 9, 1945  
No. 52] NEW DELHI, DECEMBER 24—DECEMBER 30, 2023, SATURDAY/PAUSHA 3—PAUSHA 9, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

विदेश मन्त्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 26 दिसम्बर, 2023

का.आ. 1891.— राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, बहरीन में कप्तान सिंह गुर्जर, सहायक अनुभाग अधिकारी, को दिसंबर 26, 2023 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी. 4330/1/2023(41)]

एस.आर.एच. फहमी, निदेशक (सीपीवी-1)

**MINISTRY OF EXTERNAL AFFAIRS**

(CPV DIVISION)

New Delhi, the 26th December, 2023

**S.O. 1891.**—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Kaptan Singh Gurjar, Assistant Section Officer in the Embassy of India, Bahrain as Assistant Consular Officer to perform Consular services with effect from December 26, 2023.

[F. No. T.4330/01/2023(41)]

S. R. H. FAHMI, Director (CPV-I)

**कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय**

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 20 दिसम्बर, 2023

**का.आ. 1892.**—केन्द्र सरकार, एतद द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मणिपुर राज्य सरकार की अधिसूचना सं. 12/1(4)/2023-एच(सीबीआई)(पीटी.) दिनांक 25.11.2023, गृह विभाग, इंफाल के माध्यम से जारी सम्मति से, राज्य में हाल ही में हुई हिंसा से संबंधित निम्नलिखित 02 (दो) प्राथमिकियों –

(i) **प्राथमिकी संख्या 633(7)2023** पीआरटी-पीएस, भारतीय दण्ड संहिता की धारा 143/148/307/326/354/397/34 और आयुध अधिनियम की धारा 25(1-बी) तथा अनुसूचित जाति एवं जनजाति (अत्याचार निवारण) अधिनियम की धारा 3(2)(iii), सादृश्य प्राथमिकी संख्या 00(05)2023 डब्ल्यूपीएस-सीसीपी, धाराएँ – वही

(ii) **प्राथमिकी संख्या 937(7)2023** पीआरटी-पीएस, धारा 143/148/326/307/354/506/34 भारतीय दण्ड संहिता, सादृश्य प्राथमिकी संख्या 00(07)2023 सीसीपी-पीएस, धाराएँ – वही

का अन्वेषण करने तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त मणिपुर राज्य में करती है।

[फा. सं. 228/50/2023-एवीडी-II]

कुंदन नाथ, अवर सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**

(Department of Personnel and Training)

New Delhi, the 20th December, 2023

**S.O. 1892.**—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Manipur, issued vide Notification No. 12/1(4)/2023-H(CBI) (Pt) dated 25.11.2023, Home Department, Imphal, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Manipur for investigation of following 02 (two) FIRs in connection with recent violence in the State:-

(i) **FIR No.633(7)2023 PRT-PS** U/s 143/148/307/326/354/397/34 IPC & 25(1-B) Arms Act & Sec. 3(2)(iii) of SC & ST (Prevention of Atrocities) Act corresponding to FIR No. 00(05)2023 WPS-CCP U/s-do-

(ii) **FIR No.937(7)2023 PRT-PS** U/s 143/148/326/307/354/506/34 IPC corresponding to FIR No. 00(07)2023 CCP-PS U/s-do-

and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F.No. 228/50/2023-AVD-II]

KUNDAN NATH, Under Secy.

नई दिल्ली, 26 दिसम्बर, 2023

**का.आ. 1893.**—केंद्र सरकार, राजभाषा [संघ के शासकीय प्रयोजनों के लिए प्रयोग] नियमावली, 1976 (यथा संशोधित 1987, 2007 और 2011) के नियम 10 के उप-नियम (4) के अनुसरण में कार्मिक और प्रशिक्षण विभाग के अधीनस्थ कार्यालय केंद्रीय अन्वेषण ब्यूरो के अधीन निम्नलिखित कार्यालयों, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी भाषा का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:-

1. भ्रष्टाचार निरोधक शाखा, विशाखापटनम
2. भ्रष्टाचार निरोधक शाखा, हैदराबाद

[फां. सं. ई.-11017/1/2022-हिंदी]

एस. डी. शर्मा, संयुक्त सचिव

New Delhi, the 26th December, 2023

**S.O. 1893.**—Central Government in pursuance of Sub-Rule (4) of Rule 10 of official languages [Use for official purpose of union] Rules, 1976 (as amended in 1987, 2007 and 2011) hereby notifies the following offices under the Central Bureau of Investigation, a subordinate office of Department of Personnel and Training whose more than 80 percent staff has acquired working knowledge of Hindi language:-

1. Anti Corruption Branch, Vishakhapatnam
2. Anti Corruption Branch, Hyderabad

[F.No.E-11017/1/2022-Hindi]

S.D. SHARMA, Jt. Secy.

### नागर विमानन मंत्रालय

नई दिल्ली, 18 दिसम्बर, 2023

**का.आ. 1894.**—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग), नियम, 1976 के नियम-10 के उप-नियम (4) के अनुसरण में, नागर विमानन मंत्रालय के अंतर्गत, नागर विमानन सुरक्षा ब्यूरो के निम्नलिखित कार्यालयों, जिनमें 80 प्रतिशत कार्मिकों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है।

- 1 क्षेत्रीय कार्यालय, नागर विमानन सुरक्षा ब्यूरो, लखनऊ
- 2 क्षेत्रीय कार्यालय, नागर विमानन सुरक्षा ब्यूरो, अमृतसर

[फां. सं. ई. 11014/9/2015-रा.भा.]

पीयूष श्रीवास्तव, वरिष्ठ आर्थिक सलाहकार एवं अपर सचिव

### MINISTRY OF CIVIL AVIATION

New Delhi, the 18th December, 2023

**S.O. 1894.**—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for the Official Purposes of the Union) Rules, 1976, the Central Government, hereby notifies the following Offices of the Bureau of Civil Aviation Security, under Ministry of Civil Aviation, whereof 80% staff have acquired the working knowledge of Hindi.

- 1 Regional Office, Bureau of Civil Aviation Security, Lucknow
- 2 Regional Office, Bureau of Civil Aviation Security, Amritsar

[F. No.E-11014/9/2015-OL]

PIYUSH SRIVASTAVA, Senior Economic Advisor & Addl. Secy.

## श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 15 सितम्बर, 2023

**का.आ. 1895.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (43/2016) प्रकाशित करती है।

[सं. एल-39025/01/2023- आई आर (बी-II)-41]

सलोनी, उप निदेशक

## MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 15th September, 2023

**S.O. 1895.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 43/2016) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-39025/01/2023- IR(B-II)-41]

SALONI, Dy. Director

## ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUNAL,  
CHENNAIID No. 43/2016**Present: DIPTI MOHAPATRA, LL.M.****PRESIDING OFFICER****Date: 10.07.2023**

Sh. A. Anto Sali,

S/o J. Anthonisamy,

No. 4/212, Anthoniyar Koil Street,

North Kattur,

Trichy – 620 119.

: Petitioner

AND

1. The Branch Manager,  
Punjab National Bank,

Trichy Main Branch,

Trichy – 620 001.

: First Respondent

2. The Deputy General Manager,

Punjab National Bank

Circle Office (HRD)

Khandha Enclave

179, Sarojini Street

Ramnagar

Coimbatore-641009

: Second Respondent

**Appearance:**

For the 1<sup>st</sup> Party/Petitioner : Advocates, M/s S. Arunachalam & Associates  
 For the 1<sup>st</sup> & 2<sup>nd</sup> Respondent : Advocate, Sri S. Jayaraman

**AWARD**

This is an Application under 2A(2) of the Industrial Dispute Act.

2. The Applicant Sh. A. Anto Sali raises the dispute challenging the denial of his job as Courier / Peon by the First Respondent Bank since 30.06.2015.

The case of the Applicant in brief is that he was appointed as Part-Time Sweeper in the First Respondent Bank on 25.02.2011 with salary/wage at the rate of Rs. 175/- per day. He has studied up to 10<sup>th</sup> standard. He was all along doing the menial work such as Sweeping, Cleaning, File Stitching, Carrying Files, etc. at par with the job profile of a Messenger or a Peon. He was sponsored by the Employment Exchange, Trichy. But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Applicant in full time job but on the other hand despite of his continuance in job for 4 years, 4 months and 6 days, the Applicant was denied the job on 30.06.2015 without prior intimation. Since the Applicant has completed continues unblemished service for the above period, preference should have been given preference by the Respondent to him for filling up the permanent vacancies pursuant to Bipartite Settlement dtd.19.10.1996.

Besides he has completed his continuous service of 480 days preceding to the date of denial/termination thus is eligible for regularization under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1961. It is further contended that when some vacancies arose the Applicant made oral and written Representations to place him on permanent post. The 1st Respondent sent the Representation with his recommendation to the appropriate Authority, the 2nd Respondent for consideration. The Representation was never considered by the Second Respondent, on the other hand resorted to direct recruitment of subordinate cadre posts for filling of 80 posts in Trichy Circle vide advertisement on dtd 03.12.2014 in Tamil Daily i.e. "Thanthi". The denial / termination from job of the Applicant, without prior notice amounts to retrenchment within the purview of Section 2(oo) of ID Act. The Applicant / Petitioner was seriously affected financially and mentally for no fault of him. He raised the dispute before the Conciliation Officer – Asstt Labour Commissioner (C), Puducherry. The dispute since could not be resolved at the said forum, the Applicant approached this Tribunal seeking relief of his reinstatement in service with back wages and all other attendant benefits and regularization of his service from the date of his appointment

3. Both the Respondents entered appearance by filing Common Counter traversing almost all the pleadings except the admitted facts. The main plank of contention is that the Applicant / Petitioner is not a "Workman" within the purview of 2(s) of the ID Act. There exists no relationship of Employer-Employee in between the Respondents and the Petitioner. The service condition of the workmen / employees of the Banking Industry including the Respondent Bank are governed by Sastry Award and Desai Award and also various Bipartite Settlements. As per the Respondent's Bank Rules, the case of the candidates sponsored by the Employment Exchange is only to be considered for such employment. In view of the settlement dtd. 07.05.1984 reached by the All India PNB Employees Federation and the Bank, and the same settlement was circulated vide Circular No. 772 dtd. 17.05.1984. This settlement clearly speaks about the procedures stated therein to be followed unless the Thikana system is prevailed in the particular area. The said circular also prescribes that the recruitment of Part-Time / Full-Time Sweepers shall be as per the eligibility criteria laid down by the Bank from time to time. In supersession of the said PD circular, the Bank had issued another PAD Circular No. 72 dtd.11.02.2012 which also provides for Rules regarding the eligibility for posting of Part-Time Sweepers in various branches. It is further contended that no right exists for any person to claim regularization / absorption in Bank which dehors the Bank's Rules and Guidelines. The applicability of Tamil Nadu Industrial Establishment (Conferment of permanent status to workmen) Act at 1961 was challenged in view of ID Act. The Respondent(s) specific pleading is that the Petitioner / Applicant was never appointed by any of the Respondent on 25.02.2011 or terminated from service on 30.06.2015. There was no Service Agreement in between the Bank and the Petitioner. The claim of the Applicant is not sustainable in the eye of law. The Petitioner / Applicant is not entitled to any relief as sought for.

4. In support of their respective pleadings, both parties adduced oral as well as documentary evidence. The Petitioner, A. Anto Sali while examined himself as WW1, adduced evidence through one L. Shankaravadivelu as WW2. The Petitioner relied on 43 documents marked as Ext.W1 to Ext.W43. Some common documents since are relied on by all the Petitioners in the batch of cases those typeset volumes are also relied on. Those are Sastry Award (Vol.II), Desai Award (Vol-III) and (Vol-IV) which contains 7 nos. of Memorandum of Settlements of different dates. The Respondent examined the Manager (HR), Sri Mitra Teja as MW1 and produced 6 documents marked as Ext.M1 to Ext. M6.

The following issues emerge in the pleadings of the parties:

- (i) If the Applicant is a Workman within the purview of 2(s) of the ID Act.
- (ii) Whether there exists relationship of Employer-Employee in between the Respondent and the Petitioner.
- (iii) Whether the Applicant was terminated without prior notice?
- (iv) To what relief the Applicant / Petitioner is entitled to?

#### **Issues (i) & (ii)**

5. Since the Issues (i) & (ii) are interlinked inter alia are taken up together. Both the Witnesses WW1, the Petitioner and WW2 adduced evidence in support of the pleadings of the Claim Petition. The Petitioner states to have joined the Respondent Bank on 25.02.2011 as Part-Time Sweeper (PTS) and all along doing the menial work such as Sweeping, Cleaning and File Stitching and Carrying Files, etc. at par with the job profile of a Messenger or a Peon. The initial remuneration was paid to him on daily basis at the rate of Rs 175/-. But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Petitioner despite of his service of 4 years 4 months and 6 days. The Applicant was denied the job on 30.06.2015 without prior intimation. In view of the Bipartite settlement dtd. 19.10.1996, the Applicant is entitled to get the preference to fill up the permanent vacancy when completes 5 years of service. His representation in this regard was never considered. WW2 viz. Shri Shankaravadivelu, one retired Clerk of Respondent's Bank now holds the post of the General Secretary of "Punjab National Employees Union" which is affiliated to "All India Bank Employees Association" adduces evidence in support of the Petitioner. He categorically states to have rendered 25 years of service in the Respondent Bank till his superannuation in the year 2019. He has direct knowledge that since the engagement of the Petitioner dtd. 25.02.2011 as Temporary Employee as PTS in the Respondent's Bank, his service was utilized for whole day. The Petitioner was not only doing the menial work such as Sweeping, Cleaning, etc. but was paying Electricity and Telephone Bills, Clearing Cheques, escorts the staff for refilling of ATM and also many more works, as good as the job of a Permanent Employee. But the Applicant was never been paid wages / remuneration at par with a Permanent Employee.

6. The Respondent on the other hand adduces evidence through the Manager (HR), Mitra Teja who denies the pleadings of the Petitioner and the statement of both the Witnesses. In support of the contentions made in Counter Statement, it is stated that the Petitioner cannot plead to project himself as a "Workman" within the purview of Section-2(s) of the Industrial Disputes Act, as much as he was engaged of and on whenever exigencies arose on the part of the local Branch Manager who lacks any authority to give appointment to anyone. The Applicant on the other hand has been adequately paid for his service rendered for the Branch. There exists no Employer-Employee relationship in between the Respondents and the Petitioner. The claim of the Petitioner amounts to "backdoor entry" thus the claim for reinstatement with back wages is not sustainable. The Counsel for both parties advanced their respective arguments drawing attention to the documents on record.

7. The Counsel for both parties advanced their respective arguments drawing attention to the documents on record. In view of the discussion held in preceding paragraphs with regard to the pleadings of the parties, it is to be seen if there exists any Employer-Employee relationship in between the Petitioner and the Respondent.

In this context the documents filed by the Petitioner are taken into consideration. The documents are filed in a haphazard manner. Even though the Petitioner claims to have joined the Bank on 25.02.2011, no document in its support is filed. It reveals from Ext.W1 dtd. 20.12.2012, Ext.W5 dated 24.01.2013 and Ext.W16 dtd. 19.10.2013 are the forwarding letters disclosing forwarding the Application of the Petitioner to the Chief Manager (HRD), Circle Office, Trichy for consideration. Ext.W15 is the recommendation found to have been forwarded alongwith Ext.W16. Ext.W27 dtd. 08.05.2014 is a willingness to work wherein the initial date of engagement is shown as 25.02.2011. Similarly Ext.W31 dtd. 16.05.2015 is a forwarding letter showing the Application of the Petitioner forwarded by the Chief Manager to Circle Head, Trichy. Ext.W39 and Ext.W40 dtd. 07.02.2016 are the same representation of the Petitioner. Ext.W2 to Ext.W3, Ext.W6 to Ext.W14 and Ext.W17 to Ext.W19 are the salary vouchers in respect of the Petitioner. Some documents are repeated i.e. Ext.W9 and Ext.W10. Ext.W24 and Ext.W25 are produced showing as Expenditure Statement. Ext.W26 is the Passbook entries of the Petitioner. Ext.W28 is not accepted as not legible. Ext.W37 dtd. 01.07.2015 is the Special Recruitment Drive. Ext.W41 dtd. 31.05.2017 is the circular of the General Secretary regarding a proposal for conversion of Part-Time Employees as Peon vide his letter to All India Punjab National Bank Employees Federation (AIPNBEF). Ext.W42 and Ext.W43 are the relevant extracts of the 8<sup>th</sup> and 9<sup>th</sup> Bipartite Settlements.

8. As such, except Ext.W1, Ext.W5, Ext.W15 and Ext.W27, none of the other documents can be taken into consideration. All other documents are the internal communications, sometime made in between the General Secretary of All India Punjab National Bank Employees Federation (AIPNBEF) and sometime some of the documents are the circular and memorandum issued by the Respondent's Bank. As such, those documents are no way concerned to the claim of the Petitioner nor can be accepted in his favour. At the outset, it is pertinent to mention that while the Petitioner is claiming to have worked under the Respondent since 25.02.2011, he fails to produce a single scrap of

document regarding his continuity of service from that date 25.02.11 till the claimed oral termination on 30.06.2015. Even if the contentions of Ext.W15 dtd. 09.10.2013 is taken into consideration that the Chief Manager has recommended the Petitioner's name for consideration to the post is accepted, the contentions therein is to be looked into. Ex.W15 discloses that the Branch has been utilizing his services on daily wages on many days in the year 2011. The mere fact of admission of Respondent would not suffice to prove the continuity of Petitioner's service till issuance of the Ext.W15 which is 09.10.2013. Beyond that, the documents under Ext.W39 and Ext.W40 are the Representations (same content) of the Petitioner would no way help the case of Petitioner in absence of any candid documentary evidence. It is pertinent to mention that the Petitioner also failed to produce any scrap of document if at all he has been paid with any remuneration or wage during that period 25.02.2011 till the oral termination on 30.06.2015. In this context, the Ext W26 is seen. It is the Bank Pass Book of Petitioner showing some frequency of almost same amount Rs. 3,245/- and sometimes Rs. 3,494/- commencing from 05.09.2012 till 20.11.2014, credited to his account from one M/s Soujanya Enterprises, which seems to be a Contractor. It is pertinent to mention that the Claim Petition never whispered if at all the Petitioner was ever engaged by a Contractor by name Soujanya Enterprises which has been engaged by the First and Second Respondent. Thus, such fact of credit of amount in his PNB SB Account cannot hold good to prove that the Petitioner was directly engaged by the Respondent at any point of time.

Even if for the sake of argument advanced by the Counsel for the Petitioner is accepted, the Petitioner on several occasions submitted applications and representations as per the above exhibits, such mere fact is nothing but self-serving document which would not suffice to hold that such of his engagement was ever approved by the Competent Authority. It needs mention that no such correspondence was made to him in this regard. Besides, the petitioner fails to file a single scrap of document, showing disbursement of any amount towards his remuneration or wage was ever made by the Respondents. In the worst case, even if for the sake of argument advanced by the Counsel for the Petitioner is accepted for a while that the Petitioner has been engaged for some time in between the period 2011 till 2013 vide Ext.W15, there is no iota of doubt that he was adequately paid with daily wage by the said Branch. In this context, the pleadings and submissions of the Respondent is accepted that the Branch Manager as and when requires hands engages the local person and the adequate remuneration is being paid to them. The fact mentioned in Ext.W15 by the Chief Manager is reproduced "*we have been utilizing his services on daily wages many days since 2011*". In this context, the argument is well advanced by the Counsel for the Respondent that the Petitioner when miserably failed to prove the existence of Employer-Employee relationship in between the Respondent and himself is not entitled to any relief. Admittedly, the claim of his continuity till his oral termination on 30.06.2015 is not proved. In this context, the Learned Counsel for the Respondent relies on the judicial verdict of the **High Court of Judicature of Madras** in the case of **Sri J. Alwin Edwin Vs. The Branch Manager, Punjab National Bank and Two Others vide WP No. 23017/2019 dtd. 06.10.2020**. It is held by their Lordships that *in the absence of any candid document, the Petitioner cannot seek relief on an illusory evidence stating that she was terminated from job without prior notice.*

9. In view of the discussions held in previous paragraphs, the Petitioner cannot be defined as a Workman under the 2(s) of the ID Act and also there exists no Employer-Employees relationship in between the Respondent and Petitioner.

The Issues (i) & (ii) are answered against the Petitioner.

#### **Issues (III) & (IV)**

10. In view of the findings under Issue No. (i) and (ii) above, there needs no discussion on the Issues (iii) and (iv).

In the result, the Issues (iii) and (iv) are answered against the Petitioner. The Petitioner is accordingly is not entitled to any relief as sought.

The ID case stands dismissed.

The Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

#### **Witnesses Examined:**

For the 1 <sup>st</sup> Party/Petitioner	:	WW1, Sri. A. Anto Sali
	:	WW2, Sri L. Sankaravadivelu
For the 2 <sup>nd</sup> Party/Management	:	MW1, Sri Mitra Teja

**Documents Marked:-****On the petitioners side**

<b>Ex.No.</b>	<b>Date</b>	<b>Description</b>
Ext.W1	20.12.2012	Letter from Chief Manager for considering the appointment of Anto Sali
Ext.W2	19.01.2013	Voucher being handled by Anto Sali
Ext.W3	24.01.2013	Voucher being handled by Anto Sali
Ext.W4	24.01.2013	Voucher being handled by Anto Sali
Ext.W5	24.01.2013	Letter from Chief Manager forwarding application of Anto Sali
Ext.W6	01.02.2013	Voucher being handled by Anto Sali
Ext.W7	04.05.2013	Voucher being handled by Anto Sali
Ext.W8	06.05.2013	Voucher being handled by Anto Sali
Ext.W9	11.05.2013	Salary voucher Anto Sali
Ext.W10	11.05.2013	Salary voucher Anto Sali
Ext.W11	31.05.2013	Voucher being handled by Anto Sali
Ext.W12	06.08.2013	Salary voucher to Anto Sali
Ext.W13	06.08.2013	Salary voucher to Anto Sali
Ext.W14	14.09.2013	Salary voucher to Anto Sali
Ext.W15	09.10.2013	Recommendation of Chief Manager appoint for Anto Sali
Ext.W16	19.10.2013	Contact certification of Anto Sali by the Chief Manager
Ext.W17	07.12.2013	Salary voucher to Anto Sali
Ext.W18	16.12.2013	Salary voucher to Anto Sali
Ext.W19	31.12.2013	Salary voucher to Anto Sali
Ext.W20	17.02.2014	Regulation regarding absorption of PTS
Ext.W21	22.02.2014	Memorandum of Absorption
Ext.W22	24.02.2014	Conversion of PTS as Peons
Ext.W23	04.03.2014	Circular regarding absorption of PTS
Ext.W24	03.04.2014	Copy of Payment and Expenditure Register
Ext.W25	07.04.2014	Payment and Expenditure Voucher
Ext.W26	26.04.2014	Passbook entries Anto Sali
Ext.W27	08.05.2014	Application from A. Anto Sali
Ext.W28	03.02.2015	Copy of the paper to follow register – Anto Sali
Ext.W29	12.02.2015	Educational Qualification to Peon
Ext.W30	23.04.2015	Copy of the paper to follow register – Anto Sali
Ext.W31	06.05.2015	Chief Manager forwarding the application of Anto Sali
Ext.W32	09.05.2015	Copy of the paper to follow register-Anto Sali
Ext.W33	19.05.2015	Copy of the paper to follow register – Anto Sali
Ext.W34	20.05.2015	Copy of the paper to follow register-Anto Sali



Ext.W35	27.05.2015	Letter from General Secretary from the Union
Ext.W36	23.06.2015	Paper to follow Anto Sali
Ext.W37	01.07.2015	Special Recruitment Trivet of Peon
Ext.W38	28.07.2015	Paper to follow Anto Sali
Ext.W39	07.02.2016	Demand of Employment after termination to the Branch Manager by A. Anto Sali
Ext.W40	07.02.2016	Demand of employment after termination to the General Manager by A. Anto Sali
Ext.W41	31.05.2017	Circular from the General Secretary of the Employees Federation
Ext.W42	-	Relevant portion of 8 <sup>th</sup> Bipartite Settlement
Ext.W43	-	Relevant portion of 9 <sup>th</sup> Bipartite Settlement

**On the Respondent's side**

Ex.No.	Date	Description
Ex.M1	07.05.1984	Settlement regarding fixation of wages and other Allied matters like Recruitment and appointment
Ex.M2	11.02.2012	Circular issued by the Respondent Bank
Ex.M3	25.03.2014	Circular banning the Temporary Appointment in the Bank
Ex.M4	21.09.2015	Circular issued by the bank with regard to the Recruitment and appointment of Part-Time Sweeper
Ex.M5	04.07.2016	Circular issued by the Bank with regard to Alternate mechanism in lieu of interview for recruitment of full Time/Part Time Sweeper
Ex.M6	28.11.2018	Circular No.430 Banning the Temporary Appointment in the Bank.

नई दिल्ली, 18 अक्टूबर, 2023

**का.आ. 1896.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (पहचान संख्या 65/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/10/2023 को प्राप्त हुआ था।

[सं. एल-22012/11/2018-आई.आर. (सी.एम-II)]

मणिकंदन एन., उप निदेशक

New Delhi, the 18th October, 2023

**S.O. 1896.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID. No. 65/2018) of the Central Government Industrial Tribunal-cum-Labour Court, HYDERABAD as shown in the Annexure, in the industrial dispute between the Management of S.C.C.L. and their workmen, received by the Central Government on 07/10/2023

[No. L-22012/11/2018 – IR (CM-II)]

MANIKANDAN. N., Dy. Director

**ANNEXURE****IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT  
HYDERABAD**Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 16<sup>th</sup> day of August, 2023**INDUSTRIAL DISPUTE No. 65/2018**

Between:

The Secretary, (K. Devaiah)

Godavariloya Boggugani Karmika Sangham (IFTU),

H.No.11-25, RK-6 Huts Area,

Sreerampur – 504303.

Mancherla Dist.(TS)

.....Petitioner

AND

The General Manager,

M/s. Singareni Collieries Company Ltd.,

Mandamarri Area, Mandamarri-504231.

... Respondent

**Appearances:**

For the Petitioner : None

For the Respondent: Representative

**AWARD**

The Government of India, Ministry of Labour by its order No.L-22012/ 11/2018-IR(CM-II) dated 3.4.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

**SCHEDULE**

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Sreerampur Area in denying the payment of suspension wages (Subsistence Allowance) for the suspension period of 10 days from 5.3.2011 in respect of Sri Meenugu Rayamallu, Coal Filler, SRP 3 & 3A Inc., Sreerampur Area is justified or not? If not, to what other relief the worker is entitled?”

The reference is numbered in this Tribunal as I.D. No. 65/2018 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for appearance. Respondent representative present. Record reveals that Petitioner is not appearing in this case since 2018 inspite of service of notice. It seems that Petitioner is not interested to pursue his case. In spite of providing sufficient opportunity, no representation was made on behalf of the Petitioner. Hence, a ‘No Claim’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 16<sup>th</sup> day of August, 2023.

IRFAN QAMAR, Presiding Officer

**Appendix of evidence**

Witnesses examined for the

Petitioner

NIL

Witnesses examined for the

Respondent

NIL

**Documents marked for the Petitioner**

NIL

**Documents marked for the Respondent**

NIL

नई दिल्ली, 22 दिसम्बर, 2023

**का.आ. 1897.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युको बैंक के प्रबंधन, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 1 धनबाद के पंचाट (94/2006) प्रकाशित करती है।

[सं. एल-12011/91/2006-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, 22nd December, 2023

**S.O. 1897.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 94/2006) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.1 Dhanbad* as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/91/2006- IR(B-II)]

SALONI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.**Reference: No. 94/2006**

Employer in relation to the management of UCO Bank, Patna,

AND.

Their workman.

Present: **Shri Dinesh Kumar Singh**

Presiding Officer.

**Appearances:**

For Employer :-Sri S.N. Gosh, Advocate

For workman :-Sri B. Prasad, Advocate

State : Jharkhand.

Industry:- Banking

Dated 29/09 /2022

**AWARD**

By Order No.L-12011/91/2006 (IR(B-II)) dated 17.10.2006, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

**SCHEDULE**

**“Whether the action of the management of UCO Bank, Patna in not re-instating and regularising the services of Shri Dasarath Mandal, S/o Shri Kailash Mandal, Vill. Mahaddipur, PS-Kasim Bazar, Mungher, Casual worker performing the duties of peon is legal and justified and expedient? If not, what relief Shri Dasarath Mandal is entitled to?”**

2. The Tribunal in this matter has passed an award on 06/06/2012 and held as follows:-

“ I hold that the action of the management of UCO Bank, Patna in not re-instating and regularising the services of Shri Dasarath Mandal, S/o Kailash Mandal, Vill-Mahaddipur, P.S. Kasim Bazar, Mungher, Casual worker performing the duties of peon is not legal and justified. Accordingly, the concerned workman is entitled to be reinstated in service with effect from the date of his stoppage of work and to be regularised as Peon from the year 2003. The management is directed to implement the award within 30 days from the date of publication of the Award.

3. The management of UCO Bank, Patna being aggrieved by the said award filed a Civil Writ bearing CWJC No. 23246 of 2012 before the Hon’ble High Court of Patna. The Hon’ble High Court of Patna has been pleased to

observe as follows:- “In such view of matter, the award dated 06/06/2012 passed by the Central Government Industrial Tribunal No.1, Dhanbad in Reference No. 94 of 2006, is set aside .

However the matter is remanded back for deciding the issues raised by the parties in accordance with law.”

4. After production of the order of Hon’ble High Court of Patna passed in CWJC No. 23246 of 2012 on 21/01/2019 by the workman namely Dasarath Manjhi sufficient opportunities were given to both the parties and both the parties were heard at length again.

5. The claim of the sponsoring union as per the statement of claim, in brief, is as follows:-

That the concerned workman namely Dasarath Mandal was orally appointed by the management of UCO Bank, Munger Branch to discharge the duties of peon w.e.f. 23/05/1981 and after appointment he was performing all the duties from 10 A.M. to 6 P.M. on weekdays and from 10 A.M. to 3 P.M. on Saturdays. He used to overstay beyond 6 P.M. on many days as per instruction of the local authority of the Bank. The duties assigned to the workman were taking out ledgers, registers from almirah, placing the same on tables, carrying token books, scroll book, posting of mails, distribution of Bank’s Dak, serving water/tea to the members of staff and stitching of vouchers and currency notes. The concerned workman was paid @ Rs. 5/- per day as his wages which was subsequently raised to @ Rs. 35/- per day and the payment was made through vouchers. A settlement was arrived at between the representatives of workmen/unions and management of UCO Bank at Apex level on 12/10/1989 for permanent absorption of the services of all daily rated workmen for working more than 240 days during the period 12/10/1986 to 12/10/1989 and the concerned workman submitted his application in the prescribed standard proforma to the Manager of the Bank for his empanelment and permanent absorption in the services of the Bank. The concerned workman has fulfilled all the criteria laid down in the settlement but the management all of sudden directed him on 01/12/1997 to stop his work and not to attend the office from the next days. Consequently the services of the workman was terminated and thereafter, the workman approached the management orally and submitted written representations for his reinstatement and regularization but all in vain. The management started regularizing the services of other workmen from the year 2003 as peons and when the concerned workman found that the junior daily rated workers had been regularized as a peon, he approached the sponsoring union for taking necessary actions of his grievances. Thereafter the union raised an industrial dispute and after failure of the conciliation proceeding the matter was sent to the Ministry for reference of this case.

A prayer has been made to reinstate the concerned workman with all back wages, to regularize the services of workman as peon w.e.f. 01/04/2003 and payment of due wages for the period of his working and Rs. 10,000/- cost for contesting the dispute.

6. On the other hand the case of the management, in brief, is as follows:-

That the Bank is a state within the meaning of Art. 12 of the Constitution of India and accordingly it has to obey the mandatory provisions of the Articles 14 & 16 of the Constitution of India. A Bipartite Agreement was signed on 01/08/1979 & 31/10/1979 between the union and the management of UCO Bank and as per agreement the casual worker/part time sweeper of the subordinate cadre who are employed to work less than six hours a week was to be engaged with certain terms and condition. The casual sweeper of this category will not be entitled to become member of the Provident Fund and other superannuation benefits at par with the full time employees but it is agreed that they would be given bonus and would be entitled for other benefits of service like uniform, leave, medical etc. The concerned workman Dasarath Mandal was hired on casual basis for brining water and sometime to clean the branch premises by the Branch Manager which is not authorised to do so, so his engagement was illegal. An agreement was signed on 12/10/1989 with three recognised unions namely (i) All India UCO Bank Employees Federation (ii) United Commercial Bank Employees Association (iii) All India United Commercial Bank Staff Federation with the management at the apex level whereby it was agreed that those who have completed 240 days or more without interruption during the period immediately preceding the settlement will be eligible for empanelment. In the meantime Banking Division Department of Economic Affairs, Ministry of Finance, Government of India advised all the public sector banks that no additional post should be created against the existing vacancies and all the consequential vacancies arising out of retirement, resignation, death or promotion should not be filled up. The Reserve Bank of India also decided that there would be ban on the bank recruitment of the staff. After that UCO Bank Employees Federation filed a writ petition before the Calcutta High Court bearing W.P.NO. 1390 of 1998 on behalf of the empanelled casual part time employees in which it was stated that the panel of 460 employees was prepared and till date only 69 casuals were absorbed against the permanent vacancy. The Hon’ble Calcutta High Court vide its order dated 04/08/1999 observed that the Reserve Bank of India imposed the restriction, so the bank could not absorb the said casual workers. The Calcutta High Court has further observed that the bank authorities not to fill up any post until those empanelled casual workers were not absorbed in the substantive posts but the union has raised this industrial dispute in spite of the restriction of the Calcutta High Court.

A prayer has been made to pass an Award in favour of the Bank.

The management by way of rejoinder has stated that the statement made in Para 1 of the written statement of the union is matter of record, the statement made in Para 2, 4, 5, 6, 7, 8, 9, 10, 11, 13 to 18 and 19 of the written

statement of the union are not correct and the statement made in Para 12 of the written statement of the union is not relevant.

7. The sponsoring union has filed rejoinder to the written statement of the management in which it has been mentioned that the statement made in Para 1, 3, 10, 11 and 22 of the written statement of management require no comments, the statement made in Para 2, 8, 9, 19, 20, 23, 24, 25, 26, 27, 28, 29 & 30 of the written statement of management are not correct, the statement made in Para-4 of the written statement of management it is submitted that the case of Uma Devi has been misquoted as the same is not a case of I.D. Act, the statement made in Para 5 to 7, 17 and 21 of the written statement of management are not relevant, the statement made in Para 12 of the written statement of management it is submitted that the Bank appointed a large number of persons orally at different Branches of the Bank to perform the duties of peons, the statement made in Para 13 of the written statement of management it is submitted that the sponsoring union is not aware of any writ petition filed before the Hon'ble High Court Calcutta, the statement made in Para 14 to 16 of the written statement of management has no bearing on the above reference and the statement made in Para 18 of the written statement of management it is submitted that the workman had been discharging his duties daily for over 7 hours and had been performing all the duties of a permanent peon.

8. The sponsoring union has examined only one witness. He is WW-1, Dashrath Mandal, the concerned workman.

The WW-1, Dashrath Mandal has deposed that he was appointed orally by the management of UCO Bank and he had discharged duties of peon at Munger Branch w.e.f. 23/05/1981. He has also deposed that he used to perform all the duties of a peon from 10 AM to 6 PM on weekdays and from 10 AM to 3 PM on Saturday. He has further deposed that he was initially paid wages @ Rs. 5/- per day which was raised to @ Rs. 35/- per day. He has further deposed that he had applied for permanent absorption as a peon as per settlement between the management of UCO Bank and the workmen unions but all of sudden his service was terminated w.e.f. 1.12.1997 and prior to termination he was not served any notice of retrenchment. He has also stated that the first batch of regularization started in the year 2003 but he was not considered for regularization.

In the cross-examination he has deposed that he is 48 years old and he had passed eighth class from Barirar-pur middle school. He has also stated that he was appointed verbally by the manager and he was removed by the Branch Manager Sri H.B. Singh without giving any reasons. He has also stated that he had not marked his attendance in the register.

9. The sponsoring union has proved the following documents in support of its case which are marked as:-

Exhibit W-1- Photo Copy of Payment Vouchers of Rs. 25 dated 17/04/1982 of Dashrath Manjhi.

Exhibit W-2- Photo Copy of Circular No. CHO/PAS/16/89 dated 19/10/1989 regarding Empanelment and absorption of persons engaged on daily wage basis.

Exhibit W-3- Photo Copy of application dated 28/11/1989 of Dashrath Mandal submitted to the General Manager Personnel UCO Bank, Head Office Calcutta.

Exhibit W-4- Photo Copy of Letter Dated 12/08/2003 by Deputy General Manager (P) regarding appointment of empanelled Casual Workers as Peon/Peon-cum-Farash.

Exhibit W-5- Photo Copy of Letter Dated 04/04/2005 addressed to Assistant Labour Commissioner (C), Ministry of Labour by the State Secretary of UCO Bank Employees Association.

Exhibit W-5/1-Photo Copy of Letter Dated 21/12/2005 addressed to Assistant Labour Commissioner (C), Ministry of Labour by the State Secretary of UCO Bank Employees Association.

10. The management has examined only one witness. He is MW-1, Nand Lal Paswan.

The MW-1, Nand Lal Paswan has deposed that he was presently working as Chief Manager Inspection and was posted at UCO Bank, 3 & 4 Red Cross Place, Kolkata. He has also stated that he had worked in UCO Bank, Munger Branch as a Senior Manager for some time during the year 2004-05. He has also deposed that there was complete restriction on the temporary appointments in any Branch or Offices of Bank on daily wages basis as per Circular No. AGM/DM Circular Letter No. 40/82. He has also stated that vide circular AGM/DM/Circular No. 18/81, it has been instructed that all the vacancies in subordinate cadre irrespective of nature of vacancies had to be filled up exclusively through Employment Exchange. He has further stated that Dasrath Mandal was hired on casual basis on daily payment system for bringing drinking water and he was never engaged for more than six hours on any day. He has drawn attention to a letter dated 18/06/2005 showing the attendance, nature of job performed and payment made to Dashrath Mandal for the period from 12/10/1986 to 12/10/1989 and again from 06/01/1990, 1991, 1992, 1993, 1994, 1995, 1996 and in the year 1997. He has further stated that Dashrath Mandal had worked for 164 days from the year 1986-1989 and for the rest years he was found to have worked much less than 240 days.. He has further stated that no sanction was taken from Divisional Head for engaging and hiring the services of Dashrath Mandal by the

Branch Manager. He has further stated that Dashrath Mandal had not worked full day and for 240 days in three years immediately prior to 12/10/1989, so he could not have been empanelled as per settlement circulated vide Circular No. CHO/PAS/16/89, dated 19/10/1989. He has also stated that the Hon'ble Calcutta High Court has passed an order in W.P. No. 1390 of 1998 by which restoration imposed by Reserve Bank of India was upheld. He has also stated that Dashrath Mandal was engaged on part time basis as a Casual Workers, so his service cannot be regularized.

In the further examination in chief, he has proved the Letter Dt. 26/09/1980 as Exhibit M-3, Letter Dt. 14/05/1981 as Exhibit M-2, Letter Dt. 19/10/1989 as Exhibit M-6, Letter Dt. 16/12/1997 as Exhibit M-5, Letter Dt. 12/10/2011 as Exhibit M-4, Order Dt. 04/08/1999 as Exhibit M-7 and Letter Dt. 13/07/1982 as Exhibit M-1.

In the cross-examination he has stated that he could not say first date of engagement and last date of removal of the concerned workman. He has also stated that there was no settlement in the year 1989 for regularisation of worker working for 240 days. He has also stated that proceeding the date of settlement number of persons were regularised.

11. The management has proved the following documents in support of its case which are marked as:-

Exhibit M-1- Photo Copy of Circular Letter No. 40/82 dated 13/07/1982 regarding temporary appointments in subordinate cadre.

Exhibit M-2- Photo Copy of Circular No. 18/81 dated 14/05/1981 regarding recruitment of staff in nationalised banks through employment exchanges.

Exhibit M-3- Photo Copy of Circular Letter No. 76/80 dated 26/09/1980 regarding terms and conditions of service for part time workmen in Bank Awards as modified by Bipartite Settlement.

Exhibit M-4 Series- Photo Copy of letter of Branch Manager, dated 18/06/2005 Munger, UCO Bank along with details of working days and payment made to him from year 1986 to 1997.

Exhibit M-5- Photo Copy of Letter of Reserve Bank Of India, dated 16/12/1997 addressed to the Chairman, UCO Bank, Calcutta.

Exhibit M-6- Photo Copy of Circular No. CHO/PAS/16/89 dated 19/10/1989 regarding empanelment and absorption of persons engaged on daily wage basis.

Exhibit M-7- Photo Copy of order of Hon'ble Calcutta High Court passed in W.P. No. 1390 of 1998.

12. The learned lawyer of concerned workman has submitted that this reference was answered by the Hon'ble Tribunal through an Award dated 06/06/2012 directing the management to regularize the services of the workman but the management filed Writ Petition No. CWJC 23246 of 2012 before the Hon'ble High Court, Patna and the Hon'ble High Court of Patna has been pleased to set aside the Award dated 06/06/2012 and remanded before the Tribunal for deciding the issues raised by the parties in accordance with . He has further argued that the concerned workman had worked for 1095 days during three years period preceding the settlement and the application dated 28/11/1989 of the workman was duly received by the manager of Munger Branch. He has also argued that the concerned workman has been examined as WW-1 and in his evidence he has fully supported his case. He has also argued that the MW-1 Nand Lal Paswan had not worked at Munger Branch during the period 1981 to 1997, so he is not acquainted with the facts of this case. He has also argued that the vouchers which were not available, as they were sold to the contractor who purchased waste paper in 2003 and some vouchers were damaged by insects. He has further submitted that management had suppressed the material facts intentionally to deprive the, workman for his right as per scheme prepared by the management, so the management had not produced payment vouchers before the Tribunal and has restored to Unfair Labour Practices. He has also submitted that the workman had worked for more than 240 days in preceding year and his termination is in violation of Section 25 F of the I.D. Act. He has made prayer for reinstatement of the concerned workman with full back wages.

13. On the other hand the learned lawyer of management has submitted that the services of the concerned workman had been hired on casual basis on daily payment system and he had never been employee as a peon. He has also submitted that the concerned workman had never worked for full day and no appointment letter was issued to him. He has also argued that the concerned workman had never worked for 240 days in any calendar year, so he was not eligible for regularisation in the Bank. He has also submitted that working for 240 days is not a magic bond which converts illegal appointment into legal appointment. He has further argued that the concerned workman was never appointed by the Bank at any point of time, so he is not entitled for regularisation in service.

14. Now, the only point of determination in this case is whether the action of the management of UCO Bank, Patna in not re-instating and regularising the services of Shri Dasarath Mandal casual worker performing the duties of peon is legal and justified and to what relief he is entitled to?

### FINDINGS

15. At the outset of discussion it is required to mention that it is an admitted fact that the concerned workman namely Dasarath Mandal had been engaged on casual basis on daily payment system.

16. Now the question arises whether the concerned workman namely Dasarath Mandal casual worker is entitled for regularisation as peon in UCO Bank.

17. In this regard WW-1 in his oral evidence has categorically stated that he had continuously discharged his duties from 23/05/1981 as Peon at Munger Branch of UCO Bank and he was removed from the service on 01/12/1997. He has also deposed that as per settlement dated 12/10/1989 he was entitled for regularization of services as a Peon of the Bank.

18. On the other hand the MW-1 has stated that the concerned workman was engaged on casual basis on daily payment system and he had not worked for 240 days in any calendar year, so he is not entitled for regularisation and reinstatement.

19. Now coming to the documentary evidence of concerned workman it appears that Exhibit W-1 is the payment voucher dated 17/04/1982 of Dasarath Mandal, Exhibit W-2 is a circular no. CHO/PAS/16/89 dated 19/10/1989 regarding empanelment and absorption of persons engaged on daily wage basis, Exhibit W-3 is an application of Dasarath Mandal dated 18/11/1989 submitted to the General Manager Personnel UCO Bank Head Office, Calcutta, Exhibit W-4 is the circular dated 12/08/2003 regarding appointment of empanelment casual workers as peon/peon-cum-farash, Exhibit W-5 is a letter dated 04/04/2005 addressed to Assistant Labour Commissioner, Ministry of Labour by the State Secretary of UCO Bank Employee Association, Exhibit W-5/1 is a letter dated 21/12/2005 addressed to Assistant Labour Commissioner, Ministry of Labour by the State Secretary of UCO Bank Employee Association.

20. The documentary evidence of management shows that Exhibit M-1 is a copy of Circular Letter No. 40/82, dated 13/07/1982 regarding temporary appointment in subordinate cadre, Exhibit M-2 is a Circular No. 18/81 dated 14/05/1981 regarding recruitment of staff in Nationalized Bank through Employment Exchange, Exhibit M-3 is a Circular Letter No. 76/80 regarding terms and conditions of service for part time workmen in the Bank Awards as modified by Bipartite Settlement, Exhibit M-4 series is a photo copy of letter of Branch Manager, Munger, UCO Bank alongwith details of working days and payment made to Dasarath Mandal from year 1986 to 1997, Exhibit M-5 is a photo copy of letter of RBI addressed to Chairman UCO Bank, Calcutta, Exhibit M-6 is a letter of Assistant Manager Personnel, UCO Bank addressed to all Branches of the Indian Union regarding empanelment and absorption of persons engaged on daily wage basis, dated 19/10/1989, Exhibit M-7 order of Hon'ble Calcutta High Court passed in W.P.No. 1390 of 1998.

21. Now, after analysing the documentary evidence of both the parties it is relevant to mention here that Exhibit W-2 is a Circular dated 19/10/1989 for empanelment and absorption of persons engaged on daily wage basis and in Para 2 of the said Circular Eligibility Criteria has been mentioned as only person who have been engaged as casual worker for full day's work and who have been discharging any of the normal duties in the Bank in the Subordinate Cadre as Casual workers for a period of 240 days or more with or without interruption during the period of 3 years immediately preceding this settlement. The Exhibit W-3 shows that concerned workman Dasarath Mandal had submitted an application for his absorption on permanent basis in the service of Bank on 08/11/1989. The concerned workman had submitted only one voucher dated 17/04/1982 which shows the payment of Rs. 25/- to him. However the Exhibit M-4 series are statement prepared on the basis of the available vouchers mentioning therein that the vouchers of some months were sold or damaged by the insects and those vouchers were not available, so a chart of from January 1987 to 1997 for a period of 11 years was prepared and those documents show that the concerned workman had not discharged his duty for whole months and he had only discharged the duty of waterman. It has been also mentioned that as per available vouchers Dasarath Mandal had discharged duties for 164 days from 12/10/1986 to 12/10/1989. Further it shows that in the year 1990 the concerned workman had discharged his duty for 123 days from 06/01/1990 to 1990, in the year 1991 the concerned workman had discharged his duty for 109 days from 23 March 1991 to 23/11/1991, in the year 1992 the concerned workman had discharged his duties for 112 days from 10/01/1992 to 25/11/1992, in the year 1993 the concerned workman had discharged his duties for 73 days from January 1993 to June 1993, in the year 1994 the concerned workman had discharged his duties for 93 days from July 1994 to November 1994, in the year 1995 the concerned workman had discharged his duties for 37 days from March 1995 to July 1995, in the year 1996 the concerned workman had discharged his duties for 62 days from April 1996 to December 1996 and in the year 1997 the concerned workman had discharged his duties for 76 days from January 1997 to May 1997.

22. In view of above discussion it is quite apparent that UCO Bank had issued a circular on 19/10/1989 for empanelment and absorption of persons engaged on daily wages basis who have discharged the normal duties in Bank for 240 days but after analyzing the Exhibit M-4 series it appears that the concerned workman had not discharged normal duties on bank for 240 days in a calendar year.



23. it is relevant to mention here that the concerned workman had not worked for 240 days continuously in a calendar year in the UCO Bank.

24. At this stage it is relevant to mention here that the word retrenchment has been defined u/s 2(oo) of the I.D. Act, definition of continuous service has been mentioned u/s 25-B of I . D .Act and the condition precedent to retrenchment has been mentioned u/s 25 F of I.D Act.

The Section 2(oo) of the I.D.Act reads as follows:-

**Section 2(oo)** -“retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

- (a) Voluntary retirement of the workman; or
- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) Termination of the service of the workman as a result of the non-renewal of contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c )Termination of the service of a workman on the ground of continued ill-health.

Section 25B of I.D. Act reads as follows:-

**25-B. Definition of continuous service** – For the purpose of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b).....

Further, Section 25F of the I.D. Act reads as follows:-

**25-F Conditions precedent to retrenchment of workmen**- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) *The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:*

(b) *The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for Every completed year of continuous service) or any part thereof in excess of six months; and*

(c) *Notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)*

25. After analyzing all the oral and documentary evidence available on the record the Tribunal comes to the conclusion that the concerned workman had never discharged his duty of continuous services for 240 days in a calendar year as Peon in UCO Bank, Munger Branch, so the section 25 F of I.D. Act is not applicable in this case.

Further the Tribunal also finds that the concerned workman had also not worked for 240 days as daily wage/peon as per Circular dated 19/10/1989, so his case was not considered by the management of Bank for his empanelment for absorption.

26. After considering all the facts and circumstances of this case, the Tribunal finds and holds that the concerned workman namely Dasarath Mandal had never discharged his duties of 240 days as a Peon in UCO Bank, Munger Branch from 23/05/1981 to 01/12/1997 in any calendar year.

27. After considering all the facts and circumstances the Tribunal renders the following award:-

“The action of Management of UCO Bank, Patna in not re-instating and regularising the services of Shri Dasarath Mandal , S/o Shri Kailash Mandal, Vill. Mahaddipur, PS-Kasim Bazar, Mungher, Casual worker performing the duties of peon is legal, justified and expedient.

28. Hence, the concerned workman namely Sri Dasarath Mandal is not entitled for any relief.

This is the Award of this Tribunal.

DINESH KUMAR SINGH, Presiding Officer



नई दिल्ली, 26 दिसम्बर, 2023

**का.आ 1898.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ़ इंडिया के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (186/2013) प्रकाशित करती है।

[सं. एल-12011/82/2013-आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 26th December, 2023

**S.O. 1898.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 186/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/82/2013- IR(B-II)]

SALONI, Dy. Director

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present - Sunil Kumar Singh-I,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad,  
Dated 22<sup>nd</sup> November, 2023

#### Reference (CGITA) No. 186/2013

The Regional Manager,  
State Bank of India,  
1<sup>st</sup> Floor, K.F.T.Z. Branch, Near KASEZ, Administrative Office,  
Kandla Special Economic Zone,  
Gandhidham (Kutch) - 370230 .....First Party / Employer

V

The Secretary,  
New Gujarat Mazdoor Manch,  
28-B, Narayan Park, B/h Chandkheda Railway Station, Chandkheda,  
Ahmedabad (Gujarat) - 382424

[For the applicant Shri Niraj P. Gianchandani s/o deceased workman Shri Parmanand Gianchandani, Assistant (Cash)]

.....Second Party / Union / Applicant

Advocate for the First Party / Employer: Shri Bhargav M. Joshi  
Advocate or the Second Party / Applicant: Shri Prabhatsinh Parmar

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/82/2013 - IR(B-I) dated 30.10.2013 referred the dispute for adjudication to this Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad in respect of the matter specified in the Schedule.

**SCHEDULE**

“Whether the action of the Regional Manager, State Bank of India, Regional Business office, KFTZ Branch, Gandhidham in not providing the compassionate appointment to Shri Niraj P. Gianchandani in place of his deceased father, Shri Parmanand Gianchandani, Assistant (Cash) of Kandla Port Branch is justified? To what relief Shri Niraj P. Gianchandani is entitled?”

1. The second party / union / applicant submitted the statement of claim at Ex. 3, stating that, late Shri Parmanand Gianchandani, father of second party / applicant Shri Niraj P. Gianchandani was working as Assistant (Cash) in the Kandla Port Branch of State Bank of India. He died in harness on 26.01.2001 due to earthquake at Gandhidham. Number of officers from the bank visited the employee's place for assisting his families to get retiral and other benefits as available to the deceased employee of the bank at relevant time and obtained signatures in blank forms for the purpose of releasing retiral dues and compassionate appointment. On 24.09.2003, the Branch Manager, Kandla Port Branch of State Bank of India informed that the competent authority has not considered the application for appointment on compassionate ground. Therefore, the son of the deceased workman Shri Niraj P. Gianchandani approached the bank for compassionate appointment but for no avail. The application for compassionate appointment was declined by the bank on the ground of non-penurious conditions and blemished service record of the deceased workman. The family of the deceased employee has no own home. The family members of the deceased employee were not asked to submit the assets and liabilities. The action of the management of Bank for rejecting the application for compassionate appointment was illegal and against the principles of natural justice. Prayed to set aside the employer / bank's order dated 16.09.2003 denying the compassionate appointment to the applicant Shri Niraj P. Gianchandani, the son of the deceased employee.
2. The first party / employer / bank has submitted written statement at Ex. 7, stating that the deceased employee Shri P. B. Gianchandani was lastly working at Kandla Port Branch as an Assistant. He died while in service on 26.01.2001, leaving his wife, son and two daughters. His son Shri Niraj P. Gianchandani applied for appointment in bank on compassionate ground after death of his father on 23.03.2001 through Kandla Port Branch of State Bank of India. He was denied appointment as the total income of the family of the deceased employee was over Rs. 10000/- per month taking into the account of the income from terminal benefits and investment amounting to Rs. 7.54 lakhs and family pension of Rs. 6032/- per month and interest income on net corpus. The condition of the family of the deceased was not considered as penurious. It was further stated that disciplinary action was also taken against Shri P. B. Gianchandani, wherein he was awarded punishment for gross misconduct. A criminal case was also pending against him on account of charge-sheet filed by Gandhidham Police. Therefore, as per the provision of the scheme, the dependant of an employee whose service record was blemished on account of disciplinary action having been taken against him, was ineligible for compassionate appointment. On the basis of the aforesaid reasons, the applicant was denied compassionate appointment vide order dated 16.09.2003. Prayed to dismiss applicant's claim for compassionate appointment.
3. The second party / applicant has filed documentary evidence detailed as under:

Sl. No.	Name / Details of the document	Date of Document	Serial of Document	Type/ Remarks
1	Death Certificate of Late Shri Parmanand Gianchandani dying on 26.01.2001	26.01.2001	Ex. 25	Xerox
2	Reply under RTI Act, 2005 from CPIO, SBI, Lal Darwaja, Ahmedabad to Shri Niraj P. Gianchandani	20.12.2008	Ex. 26	Xerox
3	Death Certificate of Late Smt. Sarla Gianchandani, mother of the applicant, dying on 04.01.2017	17.01.2017	Annexure to Ex. 27	Xerox

4. The second party / applicant has deposed himself at Ex. 9 in oral examination.
5. The first party / employer has filed documentary evidence detailed as under:

Sl. No.	Name / Details of the document	Date of Document	Serial of Document	Type/ Remarks
1	Application for appointment on compassionate grounds	23.03.2001	Ex. 11	Xerox

2	Revocation of suspension order of Shri Parmanand B. Gianchandani	17.02.1999	Ex. 12	Xerox
3	Speaking order of denying the appointment on compassionate ground to Shri Niraj P. Gianchandani	16.09.2003	Ex. 13	Xerox
4	Scheme for appointment of dependent of deceased employees / employees retired on medical grounds on compassionate ground	09.01.1997	Ex. 14	Xerox
5	Amended scheme for compassionate appointments / dependent in respect of cases where the deceased employee / employee retired on health grounds / had been involved in major / gross misconduct	11.03.2003	Annexure to Ex. 14	Xerox
6	Revised scheme for appointment on compassionate grounds for dependents of deceased employees / employees retired on medical grounds	22.05.2002	Annexure to Ex. 14	Xerox
7	An application u/s 39, rule 1 & 2 r/w section 151 CPC filed by the applicant in Civil Suit No. 186 of 2009 before the Court of Civil Judge, Gandhidham	25/27.10.2009	Ex. 15	Xerox
8	Order passed in Civil Suit No. 186/09 above	29.10.2009	Annexure to Ex. 15	Xerox
9	Rejection order passed on application u/o 39 r 1 & 2 CPC in Civil Suit No. 186/09	29.01.2011	Annexure to Ex. 15	Xerox
10	Employees Provident Fund statement of Shri Parmanand B. Gianchandani	30.09.2000	Ex. 19	Xerox
11	Pay slip of Shri Parmanand B. Gianchandani for the month of January, 2001	Illegible	Ex. 20	Xerox
12	Employer / SBI's information to the applicant in respect of rejection order	24.09.2003	Ex. 21	Xerox
13	Inter-departmental D.O. letter no. CDO/PM/18/SPL/164 from Shri A.C. Varma, C.G.M. to some Shri Gadhavi	05.05.2005	Ex. 22	Xerox
14	A certificate issued by SBI Employees' Co-Operative Credit Society Limited, Baroda	16.07.2001	Ex. 23	Xerox

6. The first party / employer has examined Shri Shah Mukeshkumar Chimanlal, Manager (HR), State Bank of India, RBO-IV, Gandhidham in oral evidence at Ex. 16.

7. Perused the records and heard Shri Prabhatsinh Parmar, advocate for the second party / applicant in addition to his written arguments at Ex. 28 and Shri Bhargav M. Joshi, advocate for the first party / employer / bank in addition to his written arguments at Ex. 29.

8. The main point for consideration under reference is as under:

“Whether Shri Niraj P. Gianchandani, dependent son of deceased workman Shri Parmanand Gianchandani, Assistant (Cash) is entitled for the compassionate appointment in place of his deceased father?”

9. Ld. Counsel for the applicant has argued that after the death of applicant's father Shri Parmanand Gianchandani on 26.01.2001, the applicant moved an application for compassionate appointment on 23.03.2001. The departmental scheme for compassionate appointment prevailing at relevant time had no clause of unblemished service of the deceased employee. The applicant was denied compassionate appointment by the Bank on the ground of blemished service record and non-penurious family condition without verifying the financial position of the deceased. Ld. Counsel requested to quash the employer / bank's rejection order dated 16.09.2003 denying compassionate appointment to the applicant.

10. Ld. Counsel for the employer / bank has argued that the compassionate appointment is not a right vested in the applicant but an exception. The compassionate appointment to the applicant has been denied by the employer / bank

as the family of the deceased, was neither found in penury condition nor without any means of livelihood. Disciplinary action was also taken against the deceased employee Shri P. B. Gianchandani and was awarded punishment for gross misconduct. The deceased employee was also charge sheeted by Gandhidham Police under Section 306, 342, 504 IPC and under Section 3 (2) (v) of SC / ST (Prevention of Atrocities) Act in a criminal case vide charge sheet no. 203/1997 dated 27.12.1997 which pertained to wrongful confinement of Shri Sukhvinder Singh, beating and torturing and abetment to commit suicide in respect of incident dated 08.03.1997 in SBI staff quarter at Gandhidham, occupied by one Shri C. B. Chitale, Record Keeper-cum-cashier of Kandla Port Branch of the Bank. Ld. Counsel has argued that all these facts & circumstances were taken into consideration by the competent authority in accordance with the prevalent departmental scheme for compassionate appointment before declining compassionate appointment to the applicant.

11. Ld. Counsel for the employer / bank has referred (1). State Bank of India V Somvir Singh, 2007 GLHEL – SC 38649, wherein Hon'ble Supreme Court has held that the hardship of the dependent does not entitle him to compassionate appointment de hors the scheme or the statutory provisions as the case may be. The income of the family from all sources is required to be taken into consideration. (2). General Manager, State Bank of India V Anju Jain, 2008 (8) GLHEL – SC 42064, wherein Hon'ble Supreme Court has held that the primary object of appointment on compassionate ground is to save the bereaved family from sudden financial crisis occurring due to death of sole bread earner. It is an exception to general rule of equality, not another independent and parallel source of employment. Punishment of deceased employee in department proceedings is indeed a relevant consideration for not extending the benefit to the dependent. (3). Life Insurance Corporation of India V Asha Ramchandra Ambekar, 1994 Law Suit (SC) 279, wherein Hon'ble Supreme Court has observed in Para 10 of judgement as under - "10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in Merchant of Venice: "The quality of mercy is not strain'd; It droppeth, as the gentle rain from heaven upon the place beneath it is twice bless'd; it blestth him that gives, and him that takes;" (4). MGB Gramin Bank V Chakrawarti Singh, 2013 Law Suit (SC) 706, wherein Hon'ble Supreme Court has held that the family members of deceased do not have a vested right to be appointed on compassionate ground. (5). Umesh Kumar Nagpal V State of Haryana & ors., 1994 (4) SCC 138, wherein Hon'ble Supreme Court has held that the only ground which can justify compassionate employment is the penurious condition of the deceased's family. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis.

12. At the very outset, it is worth mentioning that the employer has raised a preliminary objection in his written statement at Ex. 7 that the demand of the union to grant compassionate appointment to the dependent son of deceased employer does not fall in the definition of industrial dispute and the applicant / dependent son cannot be said to be the workman, hence, the reference is not maintainable. It is an undisputed fact that the applicant has applied in the capacity of dependent son of the deceased employee on the basis of existing departmental scheme of compassionate appointment. It is settled law that the dispute relating to compassionate appointment of the dependent son of the deceased employee / workman shall always be covered under the definition of industrial dispute as provided u/s 2 (k) of the Industrial Dispute Act, 1947, therefore, the dispute, being an industrial dispute, is well within the jurisdictional domain of this Tribunal.

13. It is pertinent to mention that my predecessor, vide award dated 12.09.2017, granted the prayer of compassionate appointment to the applicant, however, Hon'ble Gujarat High Court vide order dated 17.03.2023 passed in R / Special Civil Application No. 411/2018, remanded the matter back to this Tribunal with a direction for fresh consideration on merits after taking into consideration the scheme of compassionate appointment which was prevalent at the relevant point of time. None of the parties adduced any additional evidence after the case was received back in this Tribunal after remand. Written / oral submissions were only made as above.

14. The application dated 23.03.2001 for compassionate appointment whose undisputed photocopy has been filed by the employer at Ex. 11, seems to have been forwarded to AGM, Zonal Office, Gandhidham on 23.03.2001 by the Branch Manager of Kandla Port Bank branch of the employer / Bank. A bare perusal of rejection order dated 16.09.2003 at Ex. 13, passed by the Chief General Manager, SBI, Ahmedabad, declining applicant's prayer for appointment on compassionate ground, shows that the competent authority has declined the application mainly on two grounds i.e. non-penurious condition of the family of the deceased and blemished service record of the deceased employee.

15. The revised scheme of appointment on compassionate ground for dependent of deceased employees / employees retired on medical grounds, is also made available on record vide letter dated CDO/PM/18/SPL/262 dated 22.05.2002 whose relevant Para 10 reads as under:

"10. Financial condition of the family

Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour of dependents of employees dying in harness and leaving their family in penury and without any means of livelihood. Determining the financial condition of the family is, therefore, an

important criterion for deciding the proposals for compassionate appointment. The following factors should be taken into account for determining the financial condition of the family:

- i) Family pension
- ii) Gratuity amount received
- iii) Employee's / employer's contribution to Provident Fund
- iv) Any compensation paid by the Bank or its Welfare Fund
- v) Proceeds of LIC Policies and other investments of the deceased employee
- vi) Income of family from other sources
- vii) Income of other family members from employment, or other sources
- viii) Size of the family and verifiable liabilities, if any."

16. In view of above, a major criterion while appointing a person on compassionate ground should be the assessment of the financial condition of the family of the deceased person left behind. Unless the financial condition is entirely penury, such appointments cannot be made. In present case, the financial condition of the applicant / family is not one of destitution. The family of the deceased has already been paid terminal benefit to the extent Rs. 6,81,000/- (inclusive of Rs. 4.24 lakhs as PF and Rs. 2.57 lakhs as gratuity). That apart, a sum of Rs. 6,032/- pm as family pension, an anticipated interest on investments of Rs. 2,14,000/- (inclusive of PPF of Rs. 8,000/-, NSCs of Rs. 1,01,000/- and LIC policy of Rs. 1,05,000/-) is also depicted in the application dated 23.03.2001 at Ex. 11. The competent authority also seems to have considered the notional income of the family of the deceased over Rs. 10,000/- pm and the interest income on net corpus as mentioned in the employer's written statement at Ex. 7 vis-a-vis application for compassionate appointment (Ex. 11). These investments / income details are permitted to be taken into consideration while assessing the financial condition of the family of the deceased in accordance with Para 10 of the departmental scheme of the employer / bank as stated above.

17. The applicant Shri Niraj Parmanand Gianchandani, aged 38 years on the date of deposition dated 18.08.2014 and 22.04.2016, has deposed in his examination-in-chief submitted through affidavit at Ex. 9 in accordance with his statement of claim at Ex. 3. However, he has clarified in his cross-examination dated 22.04.2016 in respect of some post consideration irrelevant events that his two sisters have been married in the year 2003 and 2005 respectively and the earnings of his family are added through the salary of his wife from tuition and his own working through outsourcing. He has however also admitted that his mother was the recipient of the family pension and all other retiral benefits after the death of his father. The competent authority, on the basis of the financial details at the time of consideration, has rightly arrived at the conclusion that the financial condition of the family was not penurious.

18. Now it is to be seen as to whether the application for compassionate appointment could be declined on the ground of the blemished service record of deceased employee Shri P. B. Gianchandani? Employer / bank has submitted the "scheme for appointment on compassionate grounds for dependents of deceased employees / employees retired on medical grounds" circulated vide letter no. CDO/PM/CIR/67 dated 09.01.1997, wherein it has been categorically stated that the aforesaid scheme was introduced in the bank w.e.f. 01.01.1979 vide letter no. ADM/8162 dated 23.02.1979. The scheme was subsequently modified vide letter no.'s ADM/41722 dated 21.10.1982, ADM/22287 dated 08.06.1983, PA/CIR/225 dated 10.10.1987, PA/CIR/23 dated 06.03.1992 and PA/CIR/4/13/50 dated 22.06.1993. Employer / bank's witness Shri Shah Mukeshkumar Chimanlal, Manager (HR), has also clarified in his cross-examination at Ex. 16 that there was no provision regarding unblemished record of employee in the appointment on compassionate ground scheme 1979. Such provision was introduced only in the year 2003.

19. The competent authority in its rejection order dated 16.09.2003 has referred afore stated letter no. CDO/PM/18/SPL/262 dated 22.05.2002 and letter no. CDO/PM/18/SPL/1900 dated 11.03.2003 for declining the compassionate appointment on the ground of blemished record of the deceased. Undisputed photocopy of the letter dated 11.03.2003 has been made available by the employer on record, according to which, new provisions under the existing scheme were inserted as under:

(a) "The dependents of an employee who has died or who has retired on health grounds and whose service record was blemished on account of disciplinary action having been taken against him, will be ineligible for compassionate appointment in the Bank."

(b) "As regards an employee, whether working in Circle or Corporate Centre / its establishment, subsidiaries, who has died or who has retired on health grounds but was facing disciplinary action at the time of death / retirement, the compassionate appointment of a dependent will be considered by MD & GE (NB) only if on evaluation of evidence available with the bank, it is clearly established by an authority designated for the purpose that the evidence is not sufficient to establish the charges and the decision of the MD & GE (NB) in this regard will be final."

20. Afore stated clause (a) of the revised scheme clearly makes a dependent of deceased employee ineligible for the compassionate appointment if the service record of the deceased employee was blemished on account of disciplinary action. The competent authority in its order dated 16.09.2003 at Ex. 13, has mentioned that the deceased employee Shri P. B. Gianchandani was charge sheeted. The article of charge was “doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss”. The charge was accepted by deceased employee Shri P. B. Gianchandani and regretted for his act of misconduct. The disciplinary authority vide order dated 25.08.1999 imposed punishment of ‘warning’ as per clause 21(5)(f) of the Sastry Award for the gross misconduct. According to the aforesaid clause (a) of the revised scheme, the applicant / dependent was declined compassionate appointment also on the ground of the blemished service record of his father / deceased employee.

21. An important question arises here as to whether the competent authority while passing order dated 16.09.2003 on application dated 23.03.2001, could have taken into account the revised scheme circulated vide afore stated letter dated 22.05.2002 and modified / amended scheme circulated vide afore stated letter dated 11.03.2003?

22. The legal position in respect of present fact situation has been summarized by the three judges bench of Hon’ble Supreme Court in N. C. Santhosh V State of Karnataka & ors., Civil Appeal No. 9280-9281 of 2014, Date of judgement – 04.03.2020, (2020) 7 SCC 617. The relevant paragraphs 14 to 20 of the judgement read as under:

“14. It is well settled that for all government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In *Steel Authority of India Limited vs. Madhusudan Das & Ors*, (2008) 15 SCC 560, it was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirant.

15. This Court in *SBI vs. Raj Kumar*, (2010) 11 SCC 661, while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer’s right to modify the scheme depending on its policies was recognized in this judgment. Similarly in *MCB Gramin Bank vs. Chakrawarti Singh*, (2014) 13 SCC 583, this Court reiterated that compassionate appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per the scheme existing on the date of death of the Government employee.

16. However in *Canara Bank & Anr. vs. M. Mahesh Kumar*, (2015) 7 SCC 412, in the context of major shift in policy, whereunder, instead of compassionate appointment (envisaged by the scheme dated 8.5.1993), *ex gratia* payment was proposed (under the circular dated 14.02.2005), the Court adopted a different approach. Noticing the extinguishment of, the right to claim appointment, this Court held the “dying in harness scheme” which was prevalent on the death of the employee, be the basis for consideration.

17. A two judges bench headed by Justice Uday U. Lalit noticed the Supreme Court’s view in *SBI vs. Raj Kumar* (supra) and *MCB Gramin Bank vs. Chakrawarti Singh* (supra) on one side and the contrary view in *Canara Bank & Anr. vs. M. Mahesh Kumar* (supra) and felt the necessity of resolution of the conflicting question on whether the norms applicable on the date of death or on the date of consideration of application should apply. Accordingly, in *State Bank of India & Ors. vs. Sheo Shankar Tewari*, (2019) 5 SCC 600, the Court referred the matter for consideration by a larger Bench so that the conflicting views could be reconciled.

18. The above discussion suggest that the view taken in *Canara Bank & Anr. vs. M. Mahesh Kumar* (supra) is to be reconciled with the contrary view of the coordinate bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellants counsel on *Canara Bank & Anr. vs. M. Mahesh Kumar* (supra) as also the opinion of the learned Single Judge of the Karnataka High Court in *Uday Krishna Naik vs. State of Karnataka & Ors.*, *Manu/Ka/0203/1999 (Writ Petition No. 37931 of 1998)*, it can not be said that the appellants claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the Government employee.

19. In the most recent judgment in *State of Himachal Pradesh & Anr. vs. Shashi Kumar*, (2019) 3 SCC 653, the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the bench, Dr. Justice D.Y. Chandrachud reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The Dependent of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State’s policy.

20. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.”



23. The law laid down by the three judges bench of Hon'ble Supreme Court in N. C. Santhosh (supra) makes it clear that the norms prevailing on the date of consideration of the application, should be the basis for the consideration of claim for compassionate appointment, hence, the arguments of applicant's Id. counsel that the ground of blemished service record was not prevalent at the time of death of the workman and at the time of application moved for compassionate appointment, should not have been taken into consideration, do not stand in view of the aforesaid authoritative and binding precedent. The compassionate appointment has to be accordingly considered in accordance with the prevalent scheme at the time of consideration of the application and the applicant cannot claim that his case should have been considered as per the scheme existing on the date of death of the deceased employee or on the date of application of the aspirant / dependent. In the present case, employer / bank's competent authority has judiciously taken all factors into consideration in accordance with the prevalent departmental scheme as discussed above. The applicant / dependent was thus ineligible for compassionate appointment when his application was considered and unamended scheme will not apply to him. Shri Niraj P. Gianchandani, dependent son of deceased workman Shri Parmanand Gianchandani, Assistant (Cash) was accordingly not entitled for the compassionate appointment in place of his deceased father. The reference is answered in above terms. The award is passed accordingly.

Let two copies of the Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2023

**का.आ. 1899.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदाबाद** के पंचाट (45/2009) प्रकाशित करती है।

[सं. एल-12012/55/2009-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 26th December, 2023

**S.O. 1899.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 45/2009) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen.

[No. L-12012/55/2009- IR(B-II)]

SALONI, Dy. Director

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 20<sup>th</sup> day of September, 2023

**INDUSTRIAL DISPUTE No. 45/2009**

Between:

Sri V. Radha Krishna,  
Rest House Road, 28<sup>th</sup> Ward,  
Sunkara Vijayalakshmi Nagar,  
Bhimavaram-I.

..... Petitioner

AND

The Zonal Manager,  
Bank of India, Visakhapatnam Zone,  
Kissan Bhavan,

Ramnagar,

Visakhapatnam (A.P.)

.... Respondent

**Appearances:**

For the Petitioner : M/s. K. Ajay Kumar, Sudha & M. Govind, Advocate

For the Respondent: M/s. S. Surya Prakasa Rao & T. Ranadheer Singh, Advocates

**AWARD**

The Government of India, Ministry of Labour by its order No. L-12012/ 55/ 2009-IR(B.II) dated 5.11.2009 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Bank of India, Visakhapatnam and their workman. The reference is,

**SCHEDULE**

“Whether the action of the management of Bank of India, Tadepalligudem Branch in terminating the services of Shri V. Radha Krishna w.e.f. 5.3.1997 is justified? What relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 45/2009 and notices were issued to the parties concerned.

**2. The averments made in the claim statement are as follows:**

The petitioner submit that he raised the present dispute questioning the action the respondent management in terminating his services with effect from 5.3.1997 as illegal, unjust and contrary to law and violation of principles of natural justice. Further it is submitted that aggrieved by the said action of termination of services by the respondent, the petitioner raised dispute before the Assistant Labour Commissioner(Central), Vijayawada, where the conciliation / adjudication ended in failure and by considering the said failure report, the Central Government referred the dispute of the petitioner to this Hon'ble Court for adjudication. It is submitted that he joined the services of the respondent bank in the year 1984-1985 as casual labour in Group D post and worked continuously in the said post till he was illegally terminated from service in the month of March 1997 i.e. 5.3.1997. During the entire period of service, he discharged his assigned work as per the instructions of the superiors and worked to the utmost satisfaction of the superiors. That in the year 1998, the respondent management sent call letter and asked him to attend interview for the permanent absorption in the respondent bank. The petitioner attended the said interview. However, the petitioner was not provided employment. The petitioner submits that some of the juniors to him, who are similarly situated like him, were appointed in the respondent bank and subsequently their services were regularized. It is submitted that the action of the respondent management in ignoring the case of the petitioner, and ignoring seniority list, appointing the juniors in the said Group D post is illegal, unjust and contrary to law and violation of Sec.25G of the I.D. Act, 1947. Further, it is submitted that he has maintained clean record of service and no disciplinary action was initiated before terminating his services against him by the respondent management. The respondent management has not given one month notice or one month notice pay or retrenchment compensation before terminating the services of the petitioner. It is submitted that he has put in more than 1000 man days. The said action of termination and the respondent management has not following the mandatory provisions laid down under the Industrial Disputes Act. Hence the action of the respondent in termination of the services of the petitioner is illegal and unjustified. It is submitted that he made representations to the respondents personally to reinstate him into service but all efforts become futile. It is submitted that he is sole bread earner in his family and entire family is dependent on him. The petitioner further submits that he belongs to BC-D Caste. Ever since the date of his termination, he remained unemployed and could not secure alternative employment inspite of his best efforts. Therefore, it is prayed to declare the action of the Management of Bank of India, Tadepalligudem Branch is illegal, unjust and contrary to law, and direct the Respondents to reinstate the Petitioner with continuity of service, back wages and all other attendant benefits.

**3. Respondents filed counter denying the averments of the Petitioner as under:**

The allegations made in the claim statement that the Petitioner joined the services of the respondent bank in the year 1984-85 as casual labour in Group D post and worked continuously in post till he was the said illegal terminated from service in 1997 i.e., the month of march 05-03-1997; that during the entire period of petitioner service, the discharged his assigned work as per the superiors and instructions of the worked to the utmost satisfaction of the superiors are all not true and correct. That in the year 1998, the respondent management sent call letter and asked him to attend interview for the permanent absorption in the respondent bank that the petitioner attended the said interview, however the petitioner was not provided the employment; that some of the juniors to him, who are similarly situated like the petitioner, were appointed in the respondent bank and subsequently their services were regularized; that the action of the respondent management in ignoring the case of the petitioner and ignoring seniority list, appointing the juniors in the said group D list is illegal, unjust and contrary to law and violation of Section 25 G of the Industrial Disputes Act are all not true and correct. That the petitioner has maintained clean record of service and no disciplinary action was initiated before terminating his services against him by the respondent management; the respondent management has not given one month notice or one month notice pay or retrenchment compensation before terminating the services of



the petitioner; that the petitioner has put in more than 1000 man days; the said action of termination and the respondent management has not following the mandatory provisions laid down under the Industrial Disputes Act; hence the action of the respondent in termination of the services of the petitioner is illegal and unjustified are all not true and correct and are hereby denied. The material allegations that the petitioner made representations to the respondents and personal visits to the 1st and 2nd respondent's office and to reinstate him into service but all efforts put him become futile the petitioner is sole bread earner in his family and entire family is dependent on him: that the petitioner belongs to BC-D caste; that ever since the date of his termination, he remained unemployed and could not secure alternative employment inspite of his best efforts are all not true and correct. It is submitted that the petitioner is not an employee of the respondents' bank and there is no employer and employee relationship between the petitioner and the respondents Bank. Hence the question of termination of services of the petitioner with effect from 5.3.1997 does not arise. The petitioner was not recruited by the respondents' bank; hence his joining the services of the respondent bank in the year 1984-85 as casual labour in Group D post does not arise. Hence the service conditions governing the permanent staff of Bank of India are not applicable to him. The respondent bank had called the petitioner for the interview for the post of subordinate staff in the year 1998, wherein the petitioner failed to qualify. It is submitted that since the petitioner has not been engaged or employed at the respondent bank, the question of reinstatement does not arise. Therefore, the allegations made in the claim statement by the petitioner does not bind on the respondents bank and the petitioner is not entitled for any of the reliefs as claimed in the claim statement. The claim of the petitioner is barred by limitation, hence the claim of the Petitioner is not tenable under law and the same is liable to be dismissed in limine with exemplary costs. There are absolutely no tenable grounds to allow the claim statement filed by the petitioner.

4. The Petitioner got examined himself as WW1 and marked Photostat copies of six documents which were marked as Ex.W1 to W6. Respondent also examined Sri T. Satynarayana Murthy as MW1, and Sri V. Suryanphanindra Srinivas as MW2 on their behalf. In support of their claim Respondent witness has marked Photostat copies of two documents, Ex.M1 and M2.

5. Heard arguments of Learned Counsels for both the parties as well as perused written arguments.

6. **On the basis of rival contentions of both the parties, following points emerge for determination:-**

I. Whether the claim petition of the workman has been filed with inordinate delay of 12 years and barred by limitation?

II. Whether the action of Respondent Management of Bank of India, Tadepalligudem branch in terminating the services of Sri V. Radha Krishna w.e.f. 5.3.1997 is legal and justified?

III. To what relief the Petitioner is entitled?

7. **Point No.I:** Learned Counsel for the Respondent submitted that present reference is barred by limitation because the services of the workman were terminated w.e.f 5.3.1997 whereas application for present reference was made by the Petitioner on 4.3.2009, thus there is gap of more than 12 years between the date of alleged termination and application to the ALC(C). Therefore, on this count alone the reference must be dismissed.

8. On the other hand, Petitioner submitted that there is no provision under the I.D. Act, 1947 in regard to limitation for raising the ID since the amendment in the statute in respect of Sec.2A came with effect from 15.9.2010 which is applicable prospectively.

9. Perused the record. It is true that amendment in respect of Sec.2A came w.e.f. 15.9.2010 whereby the limitation period for raising the ID has been provided as within three years. But in the present case Petitioner alleges that he was engaged in the Respondent bank during the period 1984-1985 as casual labour Group-D post and worked continuously till he was illegally terminated from service in the month of March, 1997 i.e., 5.3.1997. But against the action of the Management in terminating the services, Petitioner's claim has been referred vide order dated 5.11.2009 after inordinate delay of 12 years. He has raised the dispute before the ALC(C) in the year 2009, after that reference was made to this Tribunal.

10. It is admitted fact that matter of termination of service of Petitioner was raised after 12 years from the date of termination. Admittedly there is inordinate delay in raising the dispute by the Petitioner. Respondent's counsel in support of his contention has relied upon the decision of Hon'ble Apex Court in the case of **Assistant Engineer, C.A.D., Kota Vs. Dhan Kunwar AIR 2006 SC 2670** wherein Hon'ble Apex Court have held,

"7. However, certain observations made by this Court need to be noted. In *Nedungadi Bank Ltd. K.P. Madhavankutty and Ors. (2000 (2) SCC 455)* it was noted at paragraph 6 as follows:

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order

dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent."

8. In *S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka* (2003 (4) SCC 27) the position was reiterated as follows (at para 17) :

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in *M/s. Shalimar Works Ltd. v. Their Workmen* (AIR 1959 SC 1217)(supra), that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of the most of the old workmen was held to be fatal in *Mis. Shalimar Works Limited v. Their Workmen* (AIR 1959 SC 1217\supra), In *Nedungadi Bank Ltd. v. K.P. Madhavankutty and others* AIR 2000 SC 839(supra) , a delay of 7 years was held

to be fatal and disentitled to workmen to any relief. In *Ratan Chandra Sammanta and others v. Union of India and others* (1993 AIR SCW 2214 (supra), it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in *Daily Rated Casual Employees under P and T Department v. Union of India* (AIR 1987SC 2342Xsupra), the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay."

Similarly, in the case of *Ratan Chandra Sammanta and others Vs. Union of India and others* 1993 AIR SCW 2214, wherein Hon'ble Apex Court have held that,

" Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be

correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed."

Therefore, in view of the aforesaid law laid down by the Hon'ble Apex Court, in the present matter there is inordinate delay of almost 12 years in raising the ID by the Petitioner against the alleged termination order and no sufficient reason has been explained by the workman in the claim statement for such inordinate delay. In view of the facts and circumstances of the present matter the delay of twelve years without any justifiable reason is fatal to the claim of the workman and disentitle the workman to any relief. Therefore, in these circumstances, the claim petition filed by the Petitioner is barred by limitation.

Thus, Point No.I is decided accordingly.

11. **Point No.II:** Petitioner in his claim statement alleged that he joined the services of the Respondent bank in the year 1984-85 and worked continuously in the said post till he was illegally terminated from service in the month of March, 1997 and during the entire period of service, he discharged his assigned work in as per the instructions of the superiors and worked to the utmost satisfaction of the superiors. In support of his plea Petitioner has filed affidavit of WW1 in lieu of chief examination wherein he has supported the version of his claim petition whereas he was cross examined by the Respondent counsel and in cross examination he has admitted that he do not have any appointment letter.

12. On the other hand, Respondent in his counter has contended that Petitioner is not an employee of the Respondent bank and there is no employer and employee relationship between the Petitioner and the Respondent

bank. Hence, the question of termination of the services of Petitioner w.e.f 5.3.1997 does not arise. It is further contended that the Petitioner was not recruited by the Respondents' bank. Hence, the allegation that the Petitioner joined the services of the Respondent bank in the year 1985 as casual mazdoor / labour in Group-D post does not arise as well as the service conditions governing the permanent staff of Bank of India are not applicable to him. In support of his contention Respondent has examined MW1 and MW2, and in examination in chief Respondent has supported the contentions as made in the counter. Although the witness MW1 cross examined by the Petitioner's counsel but nothing is elicited from the cross examination of witness to contradict the version of the counter. Admittedly, the Petitioner was not selected through the process of recruitment in the exigencies of the work as WW1 himself has admitted that he does not have any appointment letter. It is clear proof that he was not regularly appointed in the services of the bank and he had been working as daily wages. Now, the question arises whether the services of the Petitioner were terminated in violation of the Sec.25F and 25G of the I.D. Act, 1947. The Petitioner in his claim petition alleges that he has maintained clean record of the services and no disciplinary action was initiated before termination of his services by the Respondent Management. The Respondent Management did not give one month notice or retrenchment compensation before terminating the services of the Petitioner. The Petitioner further submits that he has put in more than 109 days, the said action of the termination by the Respondent Management without following the mandatory provisions is illegal and unjustified. Before examining the alleged claim of the Petitioner of the violation of provisions of Sec.25F and 25G of the I.D. Act, 1947, it would be apposite to mention the relevant provisions of the I.D. Act, 1947:-

**Section 25F in The Industrial Disputes Act, 1947 provides,**

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

**Section 25G in The Industrial Disputes Act, 1947 provides,**

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

Further, in *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:*

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is a statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year."

**In the case of Mohan Lal v. Management, BEL 1981 SCC P. 225, Hon'ble Apex Court held, "**

*Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act, he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."*

**The Hon'ble Apex Court in this case also laid down the principle of how to count 240 days of service within one year and held:** "Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service period of 240 days during the period of 12 calendar months for counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, i.e. the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F".

Further on the other hand, the Respondent contended that the alleged termination from the service of the Petitioner does not tantamount to retrenchment u/s 25F of I.D. Act, 1947. The contention of the workman as per his request

letter is that he worked for 1000 days during the period of 13 years 1984 to 1997, thus, less than 80 days per year. Whereas in his letter dated 3.2.2005 which he wrote to Bank of India and request letter dated 4.3.2009 which he made to Central Labour Officer, he stated that he worked in the bank as badli sepy/casual labour for 1000 days from 1984 onwards. Whereas in paragraph 4 of his claim statement he mentioned that he has put in more than 1000 man days. Even in the evidence affidavit submitted by him, he has stated the same. This works out to less than 70 days per annum. Thus, the number of days for which he allegedly worked in the bank as daily worker/replacement for regular staff on leave is not significant so as to warrant relief u/s 25F of the I. D. Act, 1947.

13. Perused the record. Since the Petitioner himself has claimed that since 1984 he had worked for more than 1000 days, in his claim statement as well as in his chief examination affidavit, but nowhere he pleaded that he had worked for 240 days in a calendar year just preceding from the date of his termination i.e., 5.3.1997. As per provision of Sec.25F and B of the I.D. Act, 1947, the Petitioner workman has to prove the factum that he had worked 240 days in a calendar year just preceding from the date of his termination and the burden of proof to establish his plea by evidence lies upon the Petitioner, but the Petitioner failed to establish this fact by producing any oral or documentary evidence in this respect. Therefore, in these circumstances the claim of the Petitioner that his termination or disengagement from the service was in contravention of the Sec.25F or 25G is not tenable, is not found to be established by any reliable evidence. As regards, initial burden of proof to prove the fact of the working for 240 days in a calendar year, following decisions of the Hon'ble Apex Court are relevant :-

a. In the case of **GM., BSNL and others V. Mahesh Chand AIR 2008 SC (Supp) 1328**, wherein the Hon'ble Apex Court have held,

"It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

On reading the aforesaid decision we find that Apex court has taken a view that the burden of proof that workman had worked for 240 days in any given year, lies upon the workman but the workman did not produce any cogent evidence both oral and documentary in this regard. Thus in most cases workman can call for the employer to produce before the court the muster rolls for the given period, the letter of appointment or termination order if any, the attendance register or registers. Filing of mere affidavit will not fulfill sufficient cause in the case of the workman and the proof that he had worked for 240 days in a given year.

b. In the case of **Range Forest Officer Vs. S T Hadimani AIR 2002 SC page 1147**, wherein Hon'ble Apex Court have held,

"the onus lies upon claimant to show that he had in fact worked for 240 days in a year – In absence of proof of receipt of salary or wages record of appointment, filing of an affidavit by workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination.

c. In the case of **Essen Deinki Vs. Rajiv Kumar, AIR 2003 SC 38** the Hon'ble Apex Court have held,

"It was for the employee concerned to prove that he has in fact completed 240 days in the last preceding 12 months' period."

d. In the case of **Rajasthan State Ganganagar S Mills Ltd Vs. State of Rajasthan and another AIR 2005 SC 4065**, the Hon'ble Apex Court have held,

"It was for the claimant to lead evidence to show that he had in fact worked upto 240 days in the year preceding his termination."

e. In the case of **Municipal Corporation, Faridabad Vs. Siri Niwas AIR 2004 SC 4681**, wherein Hon'ble Apex Court have held,

"that the burden of proof was on the workman to show that he had worked for 240 days in the preceding 12 months prior to his alleged retrenchment u/s 25F of the Industrial Disputes Act, 1947. It is also held that it is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the tr. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the afore mentioned period. He even did not examine any other witness in support of his case."

f. In the case of **M.P. Electricity Board Vs. Hariram etc., AIR 2004 SC 4791**, wherein Hon'ble Apex Court have held,

"Fact that Board failed to produce muster rolls for year 1990 to 1992 though called upon to produce muster rolls for years 1987-1992- Not sufficient to draw adverse inference against Board – cannot be basis for finding that

Respondents have worked for 240 days in a year –Moreso when Respondents neither specifically claimed nor established that they had worked for 240 days in a given year.”

g. Further, in the case of **Ranip Nagar Palika Vs. Babuji Gabhaji Thakore and others /AIR 2008 SC (Supp) 1240**, wherein Hon’ble Apex Court have held ,

“the burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

h. In the case of **Krishna Bhagya Jala Nigam Ltd., Vs. Mohammed Rafi Chief Engineer, AIR 2009 SC (Supp) 2215**, wherein the Hon’ble Apex Court have held,

“Period of 240 days of employment or engagement of workman-Burden of proof as to working for 240 days is on workman and not employer.”

i. In the case of **Chief Engineer, Ranjit Sagar Dam and another Vs. Sham Lal, 2006 AIR SCW 3574**, wherein the Hon’ble Apex Court have held,

“Fact that workman had worked for 240 days or more in year immediately preceding termination – Burden of proof – Burden is on workman not on employer-delay of nine years in seeking-no relief could be given to claimant.”

Therefore, in view of the law laid down by the Hon’ble Apex Court as discussed above, it is settled law that the burden of proof to establish the fact regarding 240 days service, lies with the workman, but the workman failed to discharge his burden of proof.

14. Moreover, the Petitioner has averred in his claim petition that he has put in more than 1009 days during his service and he claims to be a workman since 1984-1997. But no documentary evidence has been filed by the Petitioner to prove this factum that the workman have worked for 240 days in any calendar year. Further, as per document Ex.W3, the Zonal Manager has addressed the report to the Asst. Labour Commissioner(C), wherein it is mentioned that the Petitioner Mr. Radha Krishna was engaged as daily wager in the Respondent branch intermittently during the absence of regular staff. He was called for interview for the post of subordinate staff in 1998, but he failed to qualify. Another document Ex.W4 filed by the workman, it is mentioned therein that the Respondent bank has written to the Zonal Manager for consideration of the candidature of Petitioner for the vacancy that may arise on account of promotion of the regular staff. Thus, whatever documentary evidence has been produced by the Petitioner, it does not support the claim of Petitioner as he alleges. Thus, the Petitioner has failed to establish his case under the provision of I.D. Act, 1947. Since the workman was not appointed against regular post, therefore, the provision of Sec.25F of the Act does not apply to his case. Therefore, I am of the considered view that the action of the Respondent management to disengage the Petitioner from service is justified.

Thus, Point No.II is decided accordingly.

15. **Point No.III:** In view of the findings given at Points No.I & II, it is held that the Petitioner is not entitled to any relief.

Thus, Point No.III is answered accordingly.

### **Result:**

In the result, the reference is answered as under:

The action of the management of Bank of India, Tadepalligudem Branch in terminating the services of Shri V. Radha Krishna w.e.f. 5.3.1997 is justified. Hence, the workman concerned is not entitled to any relief as prayed for.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 20<sup>th</sup> day of September, 2023.

IRFAN QAMAR, Presiding Officer

### **Appendix of evidence**

Witnesses examined for the  
Petitioner

WW1: Sri V. Radha Krishna

Witnesses examined for the  
Respondent

MW1: Sri Satynarayana Murthy T.

MW2:Sri V. Suryaphanindra Srinivas

**Documents marked for the Petitioner**

Ex.W1: Photostat copy of report of ALC(C) dt. 26.5.2009

Ex.W2: Photostat copy of minutes of ALC(C) dt. 7.3.2009

**Ex.W3: Photostat copy of office letter of R1 dt.18.5.2009**

Ex.W4: Photostat copy of office letter of Respondent with Annexure-B dt.8.7.1993

Ex.W5: Photostat copy of representation of the Petitioner dt.3.2.2005

Ex.W6: Photostat copy of representation of the Petitioner dt.4.3.2009

**Documents marked for the Respondent**

Ex.M1: Photostat copy of lr. of internal communication

Ex.M2: Photostat copy of lr. of internal communication

नई दिल्ली, 26 दिसम्बर, 2023

**का.आ. 1900.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युंको बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 1 चण्डीगढ़ के पंचाट (47/2020) प्रकाशित करती है।

[सं. एल-12011/03/2021-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 26th December, 2023

**S.O. 1900.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 47/2020) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Chandigarh* as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/03/2021- IR(B-II)]

SALONI, Dy. Director

**ANNEXURE****IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.**

**Present: Sh. J.K. Tripathi, Presiding Officer.**

ID No.47/2020

Registered on:-16.03.2021

Smt. Mamta W/o Sh. Gurmeet Singh Peon-cum-Daftari (UCO Bank), R/o Village Kiratpur, P.O. Pinjore, Tehsil Kalka, District Panchkula-134102(Hry.).

.....Workman

Versus

1. The Chairman, United Commercial Bank(UCO Bank), Head Office, No. 10, B.T.M., Sarani, Kolkata-700001(W.B.).
2. Zonal Manager (Haryana), UCO Bank Branch, Inside Mandir Complex, Near Bus Stand, Karnal-Haryana).

.....Respondents/Managements

**AWARD**

**Passed on:-17.07.2023**

Central Government vide Notification No.L-12011/03/2021-IR(B-II) Dated 01.03.2021, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-



**“Whether the action of the management of UCO Bank in not regularizing the services of Smt. Mamta W/o Shri Gurmeet Singh, Daily Wager, working at branch office Kalka (HR) w.e.f. 27.11.2012 as Peon-cum-Daftari, is just, fair and legal? If not, to what relief is the workman entitled?”**

1. Both the parties were put to the notice and the claimant/workman filed her statement of claim with the averments that the workman was working as Peon-cum-Daftari in Branch Office Kalka w.e.f. 27.11.2012 and till date the workman have been working continuously for more than 8 years in the aforementioned bank. Copy of work experience certificate of the workman issued by Sh. Chaman Lal, Branch Manager, UCO Bank, Kalka Branch is annexed herewith as Annexure A-2. When the workman joined the bank, the workman was assured by the management that after six months or one year the services of the workman will be made permanent but till date, the workman has not been made permanent despite various representations and her such long services in the bank. The keys of the gates of the bank remains with the workman and such practice have been going on for the last 7 years which speaks volumes of the work that the workman have been discharging her work from 9:00 AM till the closing of the bank till date. Initially the workman was paid the daily wages as per the details given below:-

Sl. No.	Period	Wages
1	w.e.f. 27.11.2012	Rs.150/-
2	After one week	Rs.180/-
3	After one year	Rs.213/-
4	And upto October, 2014	Rs.224/-
5	W.e.f. 01.11.2015 to 22.12.2015	Rs.292/-
6	W.e.f. 23.12.2015 to 06.07.2017	Rs.374/-
7	W.e.f. 07.07.2017	Rs.410/-

In 2018, the workman was paid less wages i.e. Rs.310/- and w.e.f. 04.11.2019, the management of the branch drastically decreased the wages of the workman from Rs.310/- to Rs.210/- without any notice and information arbitrarily. The management has not paid the wages to the workman as per the Notification No.S.O.190(E) dated 19.01.2017 of the Ministry of Labour and Employment. Earlier the workman was being paid wages through the vouchers issued by the Bank which are being enclosed herewith as Annexure A-3(Colly). The then Manager Mr. Chaman Lal, UCO Bank vide his official letter dated 09.02.2015 bearing reference no.3831/14-15 the Zonal Manager, UCO Bank, Chandigarh have forwarded workman's bio-data and recommended her name for confirmation of her employment in the bank. The copy of letters along with her bio-data and qualification certificates i.e. 10<sup>th</sup> from Board of School Education, Haryana and character certificate issued by the Sarpanch, Gram Panchayat along with certificates pertaining to qualifications and other certificates of the workman are attached herewith as Annexure A-5(colly). The UCO Bank, Human Resources Management Department, Head Office, No.10, 4<sup>th</sup> Floor, B.T.M., Sarani, Kolkata vide Circular No.CHO/PAS/08/2015-16 dated 01.09.2015 issued a circular to all branches/offices on the subject **CONSERVATION OF ALL TIME SWEEPERS/FULL TIME SWEEPER AS FULL TIME HOUSE KEEPER-CUM-PEON**. This Circular which was meant for the workman never shown to the workman for noting down/informing or never put on notice board by the Branch Manager, Kalka. The workman has also come to know from reliable sources that one Safai Karamchhari who is working at the residence of the Branch Manager, Kalka is being paid the part of workman's-wages. The workman also performing work of clearing of cheques and also of the cheques which are returned unpaid were being received by the workman from R.K. Courier on daily basis and the same are also pasted in the Bank Register(Annexure A-7). A list of government rates showing therein minimum rates of pay and wages of the employees paid out of contingency for various departments in District Panchkula for the year 2015-16, 2017-18 and the same is marked as Annexure A-8(colly). It is therefore, prayed that the workman is entitled for regularization in service as Peon/Daftari in the bank.

2. Management filed written statement to the claim statement filed by the workman, alleging therein that there is no relationship between the workman and the management. The workman would work as Sweeper for sanitation work and would be engaged on day to day basis as per the requirement. On certain days for the want of requisite staff, in addition to sanitation work, the workman was engaged for voucher stitching also. The recommendation given by the then Manager, UCO Bank, Kalka Branch is without any authority or power. The alleged recommendation dated 09.02.2015 is not binding on the Bank. The workman refused to do cleaning and sanitation work and expressed her willingness to do miscellaneous jobs. The workman is running Boutique after availing loan of Rs.25,000/- from the respondent-bank. The vouchers have been unauthorizedly accessed by the workman and would in fact demolish the entire case set up by the workman. the vouchers even if taken into consideration clearly mention that engagement was purely on need based requirements and that too primarily for sanitation work. The workman was never paid any amount in her account or through cheque etc. The engagement of workman was financed from “Working Expenses

Head” (Sanitation or Voucher Stitching) and the workman was paid in cash. The said circular is not applicable in the facts and circumstances of the present case. The said recommendation dated 09.02.2015 is not binding upon the respondent-bank. The said Branch Manager had no authority or occasion to issue such certificate. The workman was paid consideration commensurate to the works executed by her and there is no violation of law on the part of the respondent-bank. Presently, Sh. Sanjiv Mohan Sharma is the Manager and it has been confirmed by him that he is not engaging any such person at her place. The workman has placed on record documents obtained from the Courier Service which is not part of the record of the respondent-bank. It is therefore, prayed that the present claim petition may kindly be dismissed at the outset.

3. The workman filed rejoinder to the written statement filed by the management, alleging therein that the workman had completed more than 240 days in the preceding year. The Certificate No.383/14-15 dated 09.02.2015 addressed to Zonal Manager of the Bank by Sh. Chaman Lal, Manager clearly states that the workman Ms. Mamta was working in the branch since 27.11.2012. It is a clear cut case of unfair labour practice and exploitation of the workman. The management has not come with clean hands and misleading this Hon’ble Court and putting the distorted facts before this Hon’ble Court. The workman was working in the bank continuously full time w.e.f. 27.11.2012 for more than 7 years without any break. As the workman had already completed 7 years of service continuously without any break in the service. The workman had worked continuously for 7 years from 9 AM till the closing of the bank. The Branch Manager Sh. Chaman Lal rightly recommended the case of the workman on the basis of record and facts of the Branch Office, Kalka for which he was the only competent official/authority for the recommendation on the basis of the record of the branch office, Kalka.

4. Parties were given opportunity to lead evidence.

5. The workman in support of her case has filed her affidavit as Ex.WW1/A.

6. On 19.04.2023, the case was fixed for cross-examination of the workman but none was present on behalf of the management to cross-examine the workman and the opportunity of the management to cross-examine the workman as well as to file evidence by way of affidavit was also closed by the Tribunal. On 17.07.2023 the case was fixed for ex parte arguments of workman. Smt. Mamta the workman herself put her case and submitted that this version will be treated her argument.

7. Workman filed written arguments, alleging therein that the workman was appointed as temporary/full time casual Peon-cum-Daftri at UCO Bank Branch Kalka w.e.f. 27.01.2012 continuously to the end of year 2017 for more than 5 years in the Bank and the workman was paid salary by the bank through vouchers where daily wages paid to the workman. the than Branch Manage Sh. Chaman Lal recommended the application and bio-data form of the workman for confirmation of employment certifying therein that the workman is working in the Branch to attend whole work since 27.11.2012 and the same letter the Branch Manager recommended the name of the workman for the same subject to Banks extant guidelines. The above mentioned letter in Para V was recommended by Sh. Chaman Lal, the then Branch Manager, to the Bank’s Zonal Office in consonance with the Bank’s Circular No.CHO/PAS/08/2015-16 dated 01.09.2015 issued by the Human Resources Management Department, Head Office, Fourth Floor, 10, B.T.M. Sarani Kolkata, with the subject-coercion of part time sweepers/full time sweepers as full time House Keeper-cum-Peon. It is the irony of fate that the workman was never called for any interview in accordance mentioned circular and the workman was never considered for the conversion of part time/full time workman as full time house keeper-cum-peon despite the high recommendation by the then Branch Manager Sh. Chaman Lal under whom the workman was directly working. Great injustice was done to the workman. The workman was paid the nominal wages even below the minimum wages prescribed by the Government. The workman was never informed about the details and the criterion under which the workman was paid the nominal wages even below the minimum wages as prescribed. Even the workman was not paid the wages plus DA per day Rs.603/- which is mandatory for the Bank Official to pay minimum wages for daily wages/casual workers in Banks. The workman was also performed the work of clearing of cheques and also the cheques which are return unpaid were being received by the workman from the R.K. Courier on daily basis and the same are also pasted in the bank register with her own handwriting which clearly shows her quantum of work late in the evening. The work, conduct and behavior of the workman was up to the mark and there is no complaint against the workman during the time she performed duties in the branch even the workman worked in the various departments for the year 2016-17 and 2018. The services of the workman were terminated arbitrarily without notice and notice pay in lieu of the notice and neither the retrenchment compensation has been paid in accordance with the provision under Section 25-F, 25-G and 25-H of the ID Act. Since the workman had worked in the respondent-bank continuously without any break for almost 6 years w.e.f. 23.11.2012 to 2018 therefore, the services of the workman has been terminated in violation of Section 25-F of the Act as no notice has been given or the notice has been paid to the workman. Neither retrenchment compensation has been paid in accordance with the provision under Section 25-F, 25-G and 25-H of the Act. Workman has placed reliance to the case of CA No..346 of 2015 rising out of SLP(C) No.1532 of 2014, dated 13.01.2015 Jasmer Singh Vs. State of Haryana, CWP No.13696 of 2014 Harmesh Kumar Vs. Industrial Tribunal, Patiala and Another, CWP No.20653 of 2012, Ram Dulari Vs. Industrial Tribunal, Ludhiana, decided on 17.03.2015 and lastly in the case of CA No.6767 of 2013 (Arising out of SLP(C) No.6778 of 2012 dated 12.08.2013, Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Maha Vidhyala (D.ed) and others.



8. As per the evidence adduced by the workman, it is apparent clear that the workman has never been engaged or appointed through proper channel and the workman has never been appointed as a regular employee of the management. As per the version of the workman, it is crystal clear that the workman has been engaged by the management as daily wager on daily wage payment. So far as the prayer of the workman for regularization is concerned, since the workman has not appointed as regular employee by the management through proper channel and against permanent post from the evidence and from the version of the workman, it is crystal clear that the prayer of the workman for regularization has no force.

9. In such circumstances, it is appropriate to grant reasonable compensation instead of regularization. As such, having due regard to the facts and circumstances, an amount of Rs.2,00,000/-(Two Lakh) appears to be just and reasonable to which the workman is entitled. In case, the amount of Rs.2,00,000/-(Two Lakh) not paid within one month from the date of publication of the award, the workman is held to be entitled to 6% interest from the date of reference till payment. File after completion be consigned in the record room.

10. Let copy of this award be sent to Central Government for publication as required under Section 17 of the Industrial Disputes Act, 1947.

J.K. TRIPATHI, Presiding Officer

नई दिल्ली, 26 दिसम्बर, 2023

**का.आ. 1901.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधक, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **लखनऊ** के पंचाट (34/2004) प्रकाशित करती है

[सं. एल-12012/231/2003-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 26th December, 2023

**S.O. 1901.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 34/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen.

[No. L-12012/231/2003-IR(B-II)]

SALONI, Dy. Director

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

#### PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

**I.D. No. 34/2004**

Ref. No. No. L-12012/231/2003-IR (B-II) dt. 24.03.2004

#### BETWEEN

Sri Anoop Kumar S/o Sri Radhakrishnan

Through Sri R.K. Rawat M.L.-241,

Barra-5 Kanpur (U.P.)

..... Workman

#### AND

The Assistant, General Manager

Bank of Baroda, Regional Office,

13, Mahatma Gandhi Road,

Agra- 282001

..... Respondent

**AWARD**

Heard Sri R.N. Awashthi on behalf of workman along with Sri Anoop Kumar workman and Sri S.K. Shukla advocate for respondent, perused the record.

By order No. L- 12012/231/2003-IR(B-II) dated: 24.03.2004 the Central Government, Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub Section (2A) of the Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) industrial dispute for adjudication quoted herein below:-

*“Whether the action of the management of Bank of Baroda, Agra dismissal from service of Sri Anoop Kumar S/o Sri Radhakrishnan w.e.f. 5.10.2002 is legal and justified? If not, what relief is the concerned workman entitled to?”*

Accordingly I.D. Case No. 34/2004 **Sri Anoop Kumar versus The Assistant General Manager, Bank of Baroda** registered before this Tribunal.

On 24.03.2004 an award was passed by this Tribunal relevant portion quoted herein below.

*“Admittedly, in the instant case the management has not given any notice or compensation as required under section 25F of the I.D. Act. In the case laws cited by the workman well settled legal principles that in the case of a daily wager, if, he had worked for 240 days in a calendar year, his services cannot be dispensed with without following procedure under section 25F of the I.D. Act, have been reiterated.*

*In 1997 (76) FLR page 237 submitted by the Management side Hon’ble Apex Court has observed that if a daily wager is terminated he has no right to the post. In 2008 (119) FLR 876 Hon’ble Apex Court has hold that termination of services of daily wager does not amount retrenchment and in such circumstances the employee cannot be given benefit of reinstatement with continuity and back wages. In such circumstances employee is entitled to benefit of compensation only. In 2006(110) FLR 773 Hon’ble Apex Court has hold that if initially appointment itself is void, provision of section 25F are not applicable. In 2006 (109) FLR 156 Hon’ble Apex Court has observed that relief of full back wages may not be granted automatically.*

*In 2008(119) FLR 877 Depak Ganpat Tari V N.E. Theater Pvt. Ltd. Hon’ble Bombay High Court relying on the Hon’ble Apex Court’s judgment in 2008 (117) FLR 1086 (SC) AP v. Brahmandam 2008 (118) FLR 376(SC) Telephone DM vs Keshab Deb. 2006 (111) FLR 1178 (SC) JDV V Ram Sahal, while awarding compensation of Rs. 15000/- to the concerned workman considering his daily wages as Rs. 45/- & in view of the fact that the workman had put in about 3 years of service, has observed as under:-*

*“It is apparent that termination of services of a daily wages does not amount to retrenchment and for violation of section 25-F in such circumstances, the employee cannot be given benefit of reinstatement with continuity and back wages. Hon’ble Apex Court has hold that in such circumstances employee is entitled to benefit of compensation only.”*

*In the light of principle laid down in aforesaid case laws the ends of justice would meet by paying compensation to the workman instead and in place of relief of reinstatement in services. Having regards to these facts that the workman had worked as casual labour and he was getting Rs. 60/- per day at the time of alleged termination and keeping in view the entire facts of the case, the interest of justice would subserved, if, management is directed to pay lump sum amount of compensation only. Accordingly the management is directed to pay a sum of Rs. 12,000/- (Twelve Thousand only) to the workman as compensation for termination of his services in violation of section 25F of the I.D. Act. The said amount shall be paid to the workman within 8 weeks of publication of the award failing which the same shall carry interest @ 8% per annum, on 27.04.2009 the same was published”..*

Aggrieved by award dated 24.03.2009, claimant Sri Anoop Kumar filed writ petition no. 36284 /2009 (**Anoop Kumar versus Union of India and others**) registered before Hon’ble High court at Allahabad.

By an order dated 25.01.2023 allowed, reads as under: *“Heard Sri Devansh Mishra, learned counsel for the petitioner and Sri Amit Singh, Advocate holding brief of Sri. P.R. Chabey learned counsel for respondent no. 3*

*This writ petition has been filed assailing the award dated 24.03.2009 whereby the petitioner has been granted compensation against his termination order denying him reinstatement in service.*

*The petitioner before this court was appointed as Peon on 28.04.1990 in Bank of Baroda, Farrukhabad Branch. The petitioner worked from 28.04.1990 till 5.10.2002 and on the said date, the services were terminated by an oral order. The workman/petitioner raised an industrial dispute and on 24.03.2004, reference was made to the Industrial Tribunal-cum Labour court. The Labour Court though recording a finding that Management has not given any notice or compensation as required under Section 25-F of the Industrial Dispute Act, 1947 has terminated the services. By the award impugned, a compensation of Rs. 12,00/- was given to the petitioner in lieu of termination of his services which was in violation of section 25-F but no reinstatement was awarded.*

*Learned Counsel for the petitioner has relied upon a decision of Apex Court rendered in case of Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1, Panipat (Haryana), Civil Appeal No. 3478 of 2010, decided on 09.04.2010, Jeetubha Khansangji Jadega Vs. Kutch District Panchayat, Civil Appeal No. 6890 of 2022, decided on 23.09.2002 and Jasmer Singh Vs. State of Haryana, Civil Appeal No. 346 of 2015, decided on 13.01.2015. He then contended that award passed by the Industrial Tribunal is unsustainable in the eyes of law as the procedure as envisaged under section 25-F of the Act has not been complied with.*

*Per contra, Sri Amit Singh, learned counsel appearing for the Bank submitted that the workman was an employee of the contractor, who had supplied generator to the Bank and was working as casual labor operating the generator in the Bank. According to him, he is not the employee of the Bank.*

*He further contended that workman was never subjected to selection process, nor was given any appointment letter by the Bank. There was no relationship of master and servant between the employer and the employee. Reliance has been placed upon decision of the Supreme Court in case of Manager (Now Regional Director) R.B.I. Vs. Gopinath Sharma and another, 2006 5 Supreme 613 and in case of Divisional Manager, New India Assurance Co. Ltd. Vs. A. Sankaralingam, 2008 7 Supreme 223.*

*I have heard respective counsel for the parties and perused the material on record.*

*The short question which needs to be answered is whether the award made by the Industrial Tribunal-cum-labour Court on 24.03.2009 is sustainable once the finding has been recorded by the Tribunal itself to the effect that the procedure as envisaged under section 25-F of the Industrial Dispute Act, 1947 has not been followed and the finding has been recorded that the workman has worked for 240 days in a calendar year.*

*The Tribunal while awarding lump sum compensation at Rs. 12,000/- for termination of services of the workman relied upon the two decision of the Apex Court 1997 (76) FLR 237 and 2008 (119) FLR 877. These two cases were where the Apex Court had found that the termination of services of a daily wager does not amount to retrenchment and in such case benefit of reinstatement with continuity of back wages cannot be given.*

*In the present case, it is an admitted case that the petitioner worked from 1990 till his services were dispensed orally from 05.10.2002. The Tribunal in para nos. 22, 23 and 24 of its judgment had recorded a categorical finding that the workman worked for more than 240 days in a calendar years.*

*The Tribunal further found that the provisions of Section 25-F of the Act was not followed by the management in giving due notice or compensation. The finding recorded by the Tribunal is extracted here as under.*

*“Admittedly, in the instant case the management has not given any notice or compensation as required under Section 25F of the I.D. Act. In the case laws cited b the workman well settled legal principles that in the cases of a daily wager, if, he had worked for 240 days in a calendar year, his services cannot be dispensed without following procedure under Section 25F of the I.D, have been reiterated”.*

*In the case of Jasmeer Singh (supra), the Apex Court relying upon the earlier judgment held that termination order is void ab initio in law for-non-compliance of Section 25-F (Clauses (a) and (b).*

*In Jeetubha Khansangji Jadega (supra), the Apex Court while considering the earlier judgment of the Apex Court rendered in Bharat Sanchar Nigam Limited Vs. Bhurumal, 2014 (7) SCC 177 found that when there is a violation of Section 25-F in terminating the services of a daily wager, the reinstatement with back wages is not automatic and workman should be given monetary compensation which will meet the ends of justice.*

*In the case in hand, the compensation awarded is too meager and once finding was recorded that workman had worked for such a long period, proper compensation should have been given.*

*Reliance placed by respondent counsel on the decision of the Apex Court in case of Manager (now Regional Director) R.B.I. (Supra) is of no help to him as in that case the Tribunal has not recorded finding as to the workman having completed 240 days in the Bank and benefit under Section 25-F was denied.*

*Considering the facts and circumstances of the case, I find that one the Tribunal had recorded a specific finding regarding employee having worked for more than 240 days in a calendar year and there being no rebuttal from the side opposite as to the working of the petitioner from 1990 to 2002, the there being procedural lapse as to the compliance of section 25-F, the Tribunal should have awarded compensation in proper perspective.*

*The order passed by the Tribunal awarding Rs. 12000/- was compensation is unsustainable in the eye of law and the award dated 24.03.2009 is hereby set aside.*

*The matter is remitted back to the Industrial Tribunal-cum-labour Court for adjudication afresh in the light of the material already on record. The Tribunal shall make every endeavor to complete the proceeding within next four months from the date of production of certified copy of this order.*

*Writ petition succeeds and is partly allowed.*

**Submission on behalf of workman.**

Sri R.K. Verma learned counsel for workman, submits as under:-

In the present case appellant was initially appointed as a peon on 28.04.1990 worked in the said capacity till 05.10.2022, however without following the provision Section 25F of the Industrial Dispute Act 1947, his services were retrenched/terminated.

Aggrieved by the said act he filed ID Case No. 34/2004 allowed by the Tribunal by the order dated 24.03.2009 by which the reinstatement as prayed by claimant was not allowed however compensation of Rs. 12000/- award only in lieu of his disengaged/terminated which in violation of provision of Section 25F of the I.D. Act.

Award dated 24.03.2004 challenged by appellant/ Anoop Kumar by filling writ petition No. 36284 of 2009 partly allowed by order dated 25.01.2023 by which the Hon'ble High Court set aside order passed by Tribunal by which a sum of Rs. 12000/- awarded as compensation and remanded back matter to the Tribunal for adjudicating a fresh. On the basis of material on record.

Accordingly Sri R.K. Verma learned counsel for respondent submitted that workman was engaged on 28.04.1990 his services were retrenched/terminated 05.10.2022 that is to say he has worked more than 12 years as such following relief may be granted to the workman.

*प्रथम प्राथमिकता के आधार पर प्रार्थी को माननीय उच्चतम न्यायालय द्वारा दिये गये नवीनतम निर्णय के आधार पर सेवाओं में पुनर्स्थापित कर बैठकी अवधि का वेतन दिलाने का कृपा करे तथा यदि सम्भव न हो तो द्वितीय वरीयता पर प्रार्थी को उपरोक्त उल्लिखित निर्णय के आधार पर रुपये चौबिस लाख/पांच लाख अथवा स्वविवेक से और अधिक धनराशि भुगतान किये जाने के निर्देश प्रतिवादी बैंक को देने की कृपा करें। निर्णयों की प्रतियां संलग्न है।*

In support of his argument Sri R.K. Verma learned counsel for respondent place reliance on the following judgment.

(A) B.P.S. Mahila Vishwavidyalaya [2014(143) FLR 277]

(B) Union of India Vs Mohd.Tasleem [2022 (175) FLR 130].

**Submission made on behalf of respondent**

Sri Sharad Kumar Shukla on behalf of learned counsel for respondent submits as under:-

In the present case are that applicant/workman raised an industrial dispute against the Bank with allegation that he had worked in the Farrukhabad Branch as regular peon during the period of 28.04.1990 to 2002 and his services were illegally terminated/retrenched by the Bank without in violation of Section 25F of Industrial Dispute Act, 1947.

Further Bank had not challenged the award dated 24.03.2004 and instead complied same by making the payment of compensation amount of Rs. 12000/- vide DD No. 332160 dated 24.06.2009 but the same was not accepted by workman/claimant.

However applicant workman challenged award before Hon'ble High Court, Allahabad by way of filing the writ petition No. 36284/2009, Anoop Kumar Vs. Union of India and others and another counter affidavit has been filed by Bank and the Hon'ble High Court partly allowed the same vide judgment dated 31.01.2003 with a direction that Tribunal should pass a fresh award on the basis of material on record.

In the light of above facts and circumstances, the Bank submit as under:

- (i) The workman was lastly paid Rs. 60, per day as per record.
- (ii) The workman had been engaged as casual labour and worked in the branch.

Accordingly learned counsel for respondent Sri Sharad Kumar Shukla submits that the claimant is not entitled for the relief as claimed by claimant and in support of his argument placed reliance on the following judgment.

A. Bhavnagar Municipal Corporation Vs Jadeja Gvubha, 2014, CJ (SC) 1688.

B. Jagybir Singh Vs. Haryana State Agriculture Marketing Board, 2009 CJ (SC) 623.

C. Senior Post Master and another Vs Sri Gangaram and another 2017 CJ (All) 801.

**Finding & Conclusion**

In order to decide the controversy in the present case it will be appropriate to have glance to the judgments cited by learned counsel for the parties.

Hon'ble Punjab and Haryana High Court in case of B.P.S. Mahila Vishwavidyalaya [2014 (143) FLR 277] held as under:-

It is an admitted fact that respondent No. 1 had rendered service for period of 1-1/2 years. There is nothing on record to show that this service was permanent and further he was not a daily wager. The above award was challenged by the appellant before this Court by filing Civil Writ Petition No. 4853 of 2014. The writ petition was dismissed affirming the LPA NO. 890 of 2014. The writ petition was dismissed affirming the LPA No. 890 of 2014 (O&M) award on 27.03.2014. It was observed by the learned Single Judge that once it has come on record that service of respondent No. 1 workman was terminated without complying with the mandatory provisions of the Act, re-instatement has to be ordered as was done by the Labour Court:

*“By placing reliance upon a judgment rendered by this Court in B.S.N.L. Bhuramal, Counsel for the appellant states that instead of ordering re-instatement in service with continuity and payment of 50% back wages lumpsum compensation should have been paid to the respondent workman”.*

3. *“After hearing learned Counsel for the parties, we are not inclined to affirm the award of the Labour Court ordering that respondent No. 1 be reinstated in service on payment of 50% back wages. It is not in dispute that Respondent No. 1 was appointed by Mess Committee and the institute was not in existence. The post was not advertised. Seven Workmen including the appellant were into service under the verbal orders passed by the then Principal of the Institute. Respondent-workman was a daily wager and he had worked only for a period of 1 ½ year before his service was terminated in the year 2007. It is not expected that during this period respondent No. 1 was sitting idle and doing nothing towards earning livelihood for his family. Counsel for the appellant has placed reliance upon a judgment of Hon’ble Supreme Court in the case of B.S.N.L. Vs. Bhurmal, and also in the case of Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, to say that in such like a situation, payment of compensation is a proper remedy. But the Labour Court and the learned single judgment ordered reinstatement of service of the appellant”.*

4. *“We satisfied with the arguments raised by Learned Counsel for respondent-workman. In the above said judgment, Hon’ble Supreme Court has specifically opined that in the case of daily wager unless the termination is proved to be malafide, result of unfair labour practice, reinstatement is not only the remedy. Rights of the parties can be settled by ordering payment of compensation in favour of the workman whose service was terminated without complying with the provisions of section 25F of the Act”.*

5. *“In view of above, these appeals are partly allowed and it is ordered that instead of reinstatement in service, let the compensation amount of Rs. 3.00 lakhs each be paid to the respondents-workmen. The amount shall be paid within a period of two months, from today, failing which, respondents-workmen shall be entitled to claim interest @ 8% per annum simple, till such time payment is not made to them”.*

In the case of **Mohd. Tasleem Hon’ble Delhi High Court, 2022 (175) FLR 130** held as under:-

4. *“The Central Government Industrial Tribunal further inter-alia ordered as under:-*

*“The reference be and the same is accordingly answered in favour of the claimant workman. Since the alleged termination took place in the year 2004 and more than 18 years have passed in the meantime and it is not known whether the claimant is still eligible to be employed, it is felt proper to direct the bank to pay a lump sum amount of compensation to the claimant instead of reinstating him into service. Accordingly the bank is directed to pay 500,000/- to the claimant as a lump sum compensation for the illegal termination of his service in the month of December, 2004. This amount shall be paid to the claimant within 3 months from the date when the award would become enforceable failing which the amount shall carry interest @ 6% per annum from the date of accrual and till the final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID Act, 1947”.*

9. *“I consider that in the present case the learned Trial Court has duly appreciated the evidence. It is also an established proposition that the writ Court cannot displace the order of the Tribunal only because it can take a different opinion on the basis of the record. I do not find any illegality and perversity in the order of the learned Tribunal”.*

**The Hon’ble Supreme Court in case of Bhavnagar Municipal Corporation ETC v/s Jadeja Govubha Chhanubha & Anr. 2014 CJ (SC 1688** held as under:-

[10] The only question that remains to be examined in the above backdrop is whether reinstatement of the respondent as a Conductor is imperative at this late stage. We say so because the appellant claims to have worked for a period of just about 18 months that too nearly three decades ago. The respondent today may be past fifty if not more. The Transport Department where he was working appears to have been wound up and transport work out sourced. That apart, this Court has in a series of decisions held that the illegality in an order of termination on account of non-payment of retrenchment compensation does not necessarily result in the reinstatement of the workman in service. This Court has, in cases where such termination is found to be illegal, directed compensation in lieu of reinstatement. We may at this stage refer to some of those decisions:

[11] in *Mahboob Deepak v. Nagar Panchayat Gajraula and Anr.*, 2008 1 SCC 575, this Court held that since the appellant had worked only for a short period, interest of justice would be sub-served if the direction for reinstatement was modified and compensatory payment of Rs.50,000/- in lieu thereof directed to be substituted. Similarly in *Sita Ram and Ors. v. Moti Lal Nehru Farmers Training Institute*, 2008 5 SCC 75, this Court took into consideration the period during which the services were rendered by the workman and instead of reinstatement directed a lump sum payment of Rs. 1,00,000/- in lieu thereof

[12] in *Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr.*, 2008 4 SCC 261, this Court made a similar order as is evident from the following passage:

10. We are, therefore, of the opinion that the appellant should be directed to pay compensation to the first respondent instead and in place of the relief of reinstatement in service. Keeping in view the fact that the respondent worked for about six years as also the amount of daily wages which he had been getting, we are of the opinion that the interest of justice would be subserved if the appellant is directed to pay a sum of Rs. 50,000/- to the first respondent."

13. To the same effect is decision of this Court in *Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.*, 2009 15 SCC 327 where this Court held that while awarding compensation in lieu of reinstatement host of factors should be kept in mind. The Court said:

16. While awarding compensation, the host of factors, inter-alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. In a case such as this where the total length of service rendered by the appellant was short and intermittent from September 1, 1995 to July 18, 1996 and that he was engaged as a daily wager, in our considered view, compensation of Rs 50,000/- to the Appellant by Respondent No. 1 shall meet the ends of justice."

[14] Reference may also be made to the decision of this Court in *Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Ors.*, 2010 6 SCC 773, where this Court referred to the previous decisions on the subject to declare that even when a retrenchment order passed in violation of Section 25(F) may be set aside, reinstatement need not necessarily follow as a matter of Court. The following passage from the decision is apposite

14, it would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

[15] To the same effect is the decision of this Court in *Incharge Officer and Anr. V. Shankar Shetty*, 2010 9 SCC 126, where this Court said:

5. We think that if the principles stated in *Jagbir Singh* and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently upto September 6, 1985 e. about 25 years back, In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion, the compensation of Rs. 1,00,000/- (Rupees One lac) in lieu of reinstatement shall be appropriate, just and equitable"

[16] The case at hand, in our opinion, is one such case where reinstatement must give way to award of compensation. We say so because looking to the totality of the circumstances the reinstatement of the respondent in service does not appear to be an acceptable option. see compensation, keeping in view the length of service rendered by the respondent, wages that he was receiving during that period which according to the evidence was Rs.24.75 per day should sufficiently meet the ends of justice. Keeping in view all the hd circumstances, we are of the view that award of a sum of Rs.2,50,000/- (Rupees Two Lanes Fifty Thousand only) should meet the ends of justice.

the result we allow these appeals but only in part and to the extent that the award made by the Labour Court and the orders of the High Court shall stand modified to the extent that the respondent shall be paid monetary compensation of Rs.2,50,000/- (Rupees Two Lines Fifty Thousand only) in full and final settlement of his claim. The amount shall be pad by the appellant-Corporation within a period of two months from today failing which the said amount shall start earning interest @ 12% p.a. from the date of this order till actual payment of the amount is made to the respondent.,

**In the case of Jagvir Singh Vs. Hayana State Agriculture Marketing Board, 2009 CJ (SC) 623, it has been held as under:-**

*"It would be, thus, seen that by catena of decisions in recent time, this t has clearly laid down that an order of retrenchment passed in violation Section 25F although may be set aside but an award of reinstatement nould not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been*



*found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation”.*

*“While awarding compensation, the host of factors, inter alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. In a case such as this where the total length of service rendered by the appellant was short and Intermittent from September 1, 1995 to July 18, 1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs. 50,000/- to the Appellant by Respondent No. 1 shall meet the ends of justice. We order accordingly. Such payment should be made within six weeks from today falling which the same will carry interest 9% per annum”.*

**Accordingly Hon’ble Allahabad High Court in the case of Gangaram (supra) held as under:**

25. *“However, while the workman may have worked for two hundred forty days in the twelve calendar months immediately preceding his disengagement, it does not automatically lead to a conclusion that he was entitled to the relief of reinstatement. While, the Tribunal has taken note of the objection raised by the petitioner that the respondent workman was never substantively appointed as a driver and that he had never subjected himself to any selection process for appointment on that post, it has not returned any finding on that issue. On the other hand, the Tribunal has in respect of the document said to be the appointment letter relied upon by the workman itself noted as below:-*

*"At this place I have examined the document and find that it is specifically mentioned that one Bhagwan Das was engaged for delivery of daks but he was not having valid driving license there for he showed his inability to provide the service of the driver therefore workman Sri Ganga Ram was engaged as driver on daily rate basis to drive tempo and mail motor."*

*(emphasis supplied)*

29. *“The only issue that remains is of the relief the respondent workman would be entitled to his being a case of daily wager who had worked as a Tempo/mail motor driver on daily wage basis for a period of nearly one year and four months in an establishment that has regular work on that post.*

30. *The Supreme Court in the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and another reported in MANU/SC/1213/2009 : (2009) 15 SCC 327 held as under*

*"14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."*

31. *“Also, the Supreme Court in the case of Assistant Engineer Rajasthan Development Corporation and another v. Gitam Singh reported in MANU/SC/0079/2013 : (2013) 5 SCC 136 has held that exercise of judicial discretion by the High Court suffered from serious infirmity where the High Court upheld an award granting the relief of reinstatement to a daily wager who was found to have worked for more than two hundred forty days in the twelve calendar months immediately preceding his disengagement. Similar view has been reiterated by the Supreme Court in the case of Vice-Chancellor, Lucknow University, Lucknow Uttar Pradesh v. Akhilesh Kumar Khare and another reported in MANU/SC/0977/2015 : (2016) 1 SCC 521 wherein that Court also took note of the fact that the appointment in question had not been made on a sanctioned post and the workman in question had not been selected by following due selection procedure. In the case of Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and others reported in MANU/SC/0292/2010 : (2010) 6 SCC 773, the Supreme Court again held that the relief by way of reinstatement with the back wages is not automatic even if the termination employee is found to be illegal. In each of these cases, the Supreme Court awarded compensation in lieu of reinstatement granted by the Tribunal”.*

32. *“In the present case the respondent workman was clearly a daily wager who had worked on daily wage basis as a "Safai Karmi". He had been assigned the work of a Tempo/mail motor driver again on daily wage basis. He had never been appointed on that post on substantive basis by following the due selection process. He worked as a driver for a brief period of less than one and a half year. Upon his disengagement as a driver, he has continued to perform his duty as a "Safai Karmi" in respect of which work there was never any dispute”.*

33. "For the aforesaid reasons, the ends of justice would be met, if the writ petition is allowed with the directions to the petitioner to continue to take work from the respondent workman as a "Safai Karmi" without being prejudiced in any manner by the outcome of this writ petition and without prejudice to the workman's claim that may arise in future on account of such engagement and further, the petitioner pays to the said respondent workman a sum of rupees fifty thousand only by way of compensation for his disengagement from work as a driver with a further direction that the same be paid to him within a period of three months from today, failing which, the said amount will be paid together with interest at the rate of 9% per annum, payable for delay beyond the said period of three months".

Further on the point in issue the **Hon'ble Apex Court in the case of Ram Manohar Lohia Joint Hospital & others v. Runna Prasad Saini & another 2021 AIR (SC) 4400**, held as under:

"9. Therefore, the appointment of the first Respondent was on contractual basis and not to a regular post on proper selection in terms of the rules. Pertinently, the Respondent has not indicated his educational qualifications and whether he has necessary qualifications to work as a nurse or a ward boy. It is also obvious that the contractual term was over. In other words, the first Respondent had worked with the Appellant during the period September, 2003 to June, 2005. He has not worked thereafter. There is nothing on record to show and establish the Appellant had not followed the Rule 'last to come, first to go'. This is neither alleged nor proved.

10. In *Deputy Executive Engineer v. Kuberbhai Kanjibhai* (2019) 4 SCC 307, this Court had referred to several earlier judgments and had quoted with approval the ratio as expounded in *Bharat Sanchar Nigam Limited v. Bhurumal* (2014) 7 SCC 177, to the following effect:

33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimization, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required Under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularization [see *State of Karnataka v. Umadevi*]. Thus when he cannot claim regularization and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last-come-first-go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the Rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.

11. This dictum was again followed in *State of Uttarakhand and Anr. v. Ray Kumar* (2019) 14 SCC 353 and *Ranbir Singh v. Executive Eng. P.W.D.*

12. In view of the facts stated above, it is clear that the first Respondent was not a permanent employee but a contractual employee. There is no evidence to establish that the Appellant had retained junior workers; such unfair trade practice is not alleged or even argued before us. The first Respondent having worked for more than 240 days, termination of his services violated the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. Therefore, in the facts of the present case, we modify the order of the Labour Court by setting aside the direction for reinstatement and would enhance the compensation by awarding a lump sum amount.

13. The High Court had stayed reinstatement of the first Respondent but no order Under Section 17B of the Industrial Disputes Act was passed. The first Respondent has, however, filed an application before this Court Under Section 17B to direct the Appellant to pay the "last drawn wages".

14. In view of the aforesaid factual position, we are inclined to award a lump sum compensation of Rs. 10,00,000/- (rupees ten lakhs only) to the first Respondent.



15. The appeal is, accordingly, partly allowed setting aside the direction for reinstatement, which is substituted with the direction of award of lump sum compensation of Rs. 10,00,000/- (rupees ten lakhs only). The said amount would be paid within a period of ten weeks from the date of this order. In case payment is not made within the said period, the Appellant would be liable to pay simple interest @ 0.5% per month from the date of this order till payment is made.”

And in the case of *Ranbir Singh v. Executive Eng. P.W.D.* 2021 LLR 920, which reads as under:

“2. The case of the Appellant was that he was working with the Respondent for a period of nearly eight years and service was terminated without complying with Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as, 'the Act'). The Labour Court rejected the contention of the Respondent that the Appellant had not worked for 240 days and found that Appellant had indeed worked for 240 days. It is found that there is non-compliance of Section 25F of the Act and the Labour Court awarded reinstatement of the Appellant with 25 per cent back wages. As already noticed, it is this award which is set aside by the High Court.

3. Shri Manjeet Singh, learned Senior Counsel for the Appellant would seek to rely upon the judgment of this Court in *Ajaypal Singh v. Haryana Warehousing Corporation* (2015) 6 SCC 321. He would further submit that some of persons juniors to him were also dealt with in a different fashion, and in their case, they are working and they have, in fact, been regularised also. Learned Counsel submits that the Appellant should be reinstated in terms of the order of the Labour Court. Per Contra, Shri Samar Vijay Singh, learned AAG for the Respondent pointed out that the acceptance of the contention of the Appellant involved violation of the law laid down by this Court in *Secretary, State of Karnataka and Ors. v. Umadevi* (3) and Ors. (2006) 4 SCC 1. He still further drew out attention to the decision of this Court in *State of Uttarakhand and Anr. v. Raj Kumar* (2019) 14 SCC 353 and points out that, in such circumstances, an order of reinstatement may not be justified.

4. It is true that in the *Ajay Pal Singh* (supra), the Bench of this Court, by judgment rendered in the year 2015, took the view that, when the termination is effected of service of a daily wager, there must be compliance of Section 25F. This Court, in fact, went on also to note that unlike a private body, in the case of a public body, while it may be open to resort to retrenchment of the workmen on the score that there is non-compliance of Articles 14 and 16 in the appointment, in which case, in the order terminating the services, this must be alluded to, it would still not absolve the public authority from complying with the provisions of Section 25F of the Act and, should it contravene Section 25F, it would amount to an unfair trade practice. We do notice, this judgment has been reiterated in a subsequent judgment also in *Durgapur Casual Workers Union and Ors. v. Food Corporation of India and Ors.* (2015) 5 SCC 786.

5. However, we notice that there is another line of decisions, and the latest of the same, which is brought to our notice by Shri Samar Vijay Singh, learned AAG, is *Raj Kumar* (supra). We may refer only to paragraphs-9 and 10:

9. In our opinion, the case at hand is covered by the two decisions of this Court rendered in *BSNL v. Bhurumal* [*BSNL v. Bhurumal*, (2014) 7 SCC 177: (2014) 2 SCC (L&S) 373] and *Distt. Development Officer v. Satish Kantilal Amrelia* [*Distt. Development Officer v. Satish Kantilal Amrelia*, (2018) 12 SCC 298: (2018) 2 SCC (L&S) 276].

10. It is apposite to reproduce what this Court has held in *BSNL* [*BSNL v. Bhurumal*, (2014) 7 SCC 177: (2014) 2 SCC (L&S) 373]: (SCC p. 189, paras 33-35)

33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required Under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularization [see *State of Karnataka v. Umadevi* (3) [*State of Karnataka v. Umadevi* (3), (2006) 4 SCC 1: 2006 SCC (L&S) 753]]. Thus when he cannot claim regularization and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the Rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.

6. In the light of the state of the law, which we take note of, we notice certain facts which are not in dispute. This is a case where it is found that, though the Appellant had worked for 240 days, Appellant's service was terminated, violating the mandatory provisions of Section 25F of the Act. The authority involved in this case, apparently, is a public authority. At the same time, it is common case that the Appellant was a daily wager and the Appellant was not a permanent employee. It is relevant to note that, in the award answering Issue No. 1, which was, whether the termination of the Appellant's service was justified and in order, and if not, what was the amount of back wages he was entitled to, it was found, inter alia, that the Appellant could not adduce convincing evidence to establish retention of junior workers. There is no finding of unfair trade practice, as such. In such circumstances, we think that the principle, which is enunciated by this Court, in the decision, which is referred to in *Raj Kumar (supra)*, which we have referred to, would be more appropriate to follow. In other words, we find that reinstatement cannot be automatic, and the transgression of Section 25F being established, suitable compensation would be the appropriate remedy.

7. In such circumstance, noticing that, though the Appellant was reinstated after the award of the Labour Court in 2006, the Appellant has not been working since 2009 following the impugned order, and also taking note of the fact that the Appellant was, in all likelihood, employed otherwise, also the interest of justice would be best served with modifying the impugned order and directing that in place of Rs. 25000/- (Rupees Twenty Five Thousand), as lump sum compensation, Appellant be paid Rs. 3.25 lakhs (Rupees Three Lakhs and Twenty Five Thousand), as compensation, taking into consideration also the fact that the Appellant had already been paid Rs. 25000/- (Rupees Twenty Five Thousand) as compensation.

8. Accordingly, the appeal is partly allowed. We modify the impugned judgment by directing that over and above, compensation directed of Rs. 3.25 lakhs (Rupees Three Lakhs and Twenty Five Thousand), shall be paid to the Appellant.

**The Hon'ble Gujrat High Court in the case of Dharm Singh Desai University and Natubhai Kantibhai Rawal 2022 (175) FLR 826 held as under:-**

6.2 "As regards the quantum of compensation to the awarded, in lieu of reinstatement and 25% back wages, the Court presented with the details of the calculation. Learned Advocate for the University submitted on record statement in that regard duly signed and certified by the competent authority giving the relevant details. The total amount which become payable at 100% to each of the workmen for the period reckoned from date of termination could be Rs. 8,45,407/-, 25% thereof would be Rs. 2,11,353/-. The interest at the rate of 9% comes to Rs. 19,021/- Thus the 25% back wages come to Rs. 2,30,374/- in each case."

6.3. "Taking into consideration the factual aspects, which are relevant, as highlighted in para 6.1 above and further having regard to the figures referred to in para 6.2. above, the Court is of the view that interest of justice would be served if each of the workmen is given Rs. 50,00,000/- as lump sum compensation instead of relief of reinstatement and 25% back wages".

**The Hon'ble Apex Court in the case of National Gandhi Museum Versus Sudhir Sharma report (2021) 125CC439 Manu/SC/0705/2021 held as under:-**

11. "The object for which the said society was established and the activities admittedly Carried out by the Appellant will have to be borne in mind as one of the factors for deciding the quantum of compensation which can be granted to the Respondent in the of reinstatement. The Appellant is carrying on noble activities of propagating the thoughts of the Father of Nation by using the corpus given by the Government and by utilizing donations and safe proceeds of small articles"

12. "The Respondent has used the amount of Rs. 4,43,300/- for the last 11 years, His gross salary in the year 2004 was Rs. 5788/- per month. Taking overall view of the various factual aspects which we have discussed above, we find that compensation in the range of Rs. 6,50,000/- to Rs 7,00,000/- in lieu of reinstatement wit be just and proper in the facts of the case. Thus, after taking into consideration the sum of Rs. 4,43,380/- already received by the Respondent, a sum of Rs. 2,50,000/- will be payable by the Appellant to the Respondent".

13. "Hence, we partly allow the appeals by setting aside the order of reinstatement of the Respondent and the order of payment of back wages to the Respondent. We further direct the Appellant to pay total compensation of Rs. 6,50,000/- to the Respondent inclusive of the sum of Rs. 4,43,380/- already paid to the Respondent. We direct the Appellant to pay the amount of Rs. 2,50,000/- to the Respondent by a demand draft/Account Payee cheque within a

*period of six weeks from today. On the failure to pay the amount within six weeks from today, the amount will carry interest at the rate of 12% p.a. from the date of this Judgment. There will be no order as to costs."*

Reverting to the facts of the presence case it is not in dispute that the workman/claimant Anoop Kumar was engaged on daily wages on 28.04.1990 in Bank of Baroda Farrukhabad Branch as peon till 05.10.2022 thereafter his service was terminated/disengaged by oral order.

Aggrieved by the said fact he raised an Industrial Dispute (I D case No. 34/2004) allowed by order dated 24.03.2009, passed by this Tribunal, by which it was held that claimant was not for reinstatement in lieu of retrenched/termination of his services awarded compensation sum of Rs. 12000/- as the same is in violation of 25F of ID Act, challenged by filing writ petition 2685/2009 allowed by Hon'ble High Court by order dated 25.03.2023 with the following direction.

*The order passed by the Tribunal awarding Rs. 12000/- was compensation is unsustainable in the eye of law and the award dated 24.03.2009 is hereby set aside.*

Keeping in view of the above said facts as appellant had worked i.e. from 28.04.1990 till 05.10.2002 for more than 12 years and his services was terminated/retrenched, in contravention of provision of section 25F of the Industrial Dispute Act. So keeping in view of position of law as stated hereinabove it will be appropriate that respondent be directed to pay sum of Rs. 3 Lakhs, in lieu of compensation to workman because services was terminated/retrenched without following the provision of section 25F of the Act.

For the foregoing reasons respondent is directed to pay sum of Rs.3 lakhs by way of compensation to applicant the said amount shall be paid to him within a period of three months from the date of enforcement of award, failing which appellant is entitled to 6% interests per annum from the date of enforcement of award till actual payment from respondent.

No order as to cost.

Award as above.

Lucknow.

30.08.2023

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2023

**का.आ. 1902.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **अहमदाबाद** के पंचाट (23/2017) प्रकाशित करती है।

[सं. एल-37011/05/2016- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 27th December, 2023

**S.O. 1902.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.23/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen.

[No. L-37011/05/2016- IR(B-II)]

SALONI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present....

Sunil Kumar Singh-I,

Presiding Officer, CGIT cum Labour Court,  
Ahmedabad,  
Dated 7<sup>th</sup> August, 2023.

**Reference: (CGITA) No- 23/2017**

The Chairman,  
Kandla Port Trust,  
P.O. Box No.50,Gandhidham  
KUTCH-370201

.....First Party

V

The General Secretary,  
Transport & Dock Workers Union,  
21, Yogesh Building,  
Plot No. 586,  
12-C, Gnadhidham,  
KUTCH-370201

.....Second Party

Advocate For the First Party : Shri K. V. Gadhia & Shri M. K. Patel

Advocate For the Second Party : Shri N. H. Rathod

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/05/2016-IR(B-II) dated 28.03.2017 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Kandla Port Trust in abolishing the posts of Class-II in various departments and not filled up the said posts through Class-III employees is legal and justified, if not, what relief the concerned Class-III employees are entitled to?”

1. Today matter is called out. Shri K. V. Gadhia & Shri M. K. Patel Ld. Advocates are present for the First Party/employer and Shri N. H. Rathod, representing second party, the General Secretary, Transport & Dock Workers Union, Gandhidham. The Second Party workman has filed withdrawal pursis vide Ex.-7 along with union's letter dated 24.07.2023 vide M-7/1, wherein it is prayed that the SP / workmen's union does not want to pursue the matter further. Withdrawal is not opposed by First Party. The Second party is permitted to withdraw the reference as prayed for. Therefore, the reference is disposed of as withdrawn by the second party union/workmen.
2. Thus the reference is finally disposed of as withdrawn.

Let two copies of the Award be sent to the Appropriate Government for the needful and for publication U/s 17(1) of Industrial Disputes Act.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2023

**का.आ. 1903.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (70/2011) प्रकाशित करती है।

[सं. एल - 37011/01/2011- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 27th December, 2023

**S.O. 1903.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 70/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen.

[No. L-37011/01/2011- IR(B-II)]

SALONI, Dy. Director

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present....

Sunil Kumar Singh-I,

Presiding Officer, CGIT cum Labour Court,

Ahmedabad,

Dated 14<sup>th</sup> August, 2023

### Reference: (CGITA) No- 70/2011

1. The Chairman, Kandla Port Trust,

Administrative Office Building,

P.B.No.50,

Gandhidham-370201.

.....First Party

V

The General Secretary,

Transport & Dock Workers Union,

Room No.21, Yogesh Building,

Plot No.586/12-C,

Gandhidham-370201.

.....Second Party

Adv. for the First Party : Shri K. V. Ghadia & Shri M. K. Patel

Adv. for the Second Party : Shri L. M. Patil

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/01/2011-IR(B-II) dated 19.09.2011 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the action of the management of Kandla Port Trust in not absorbing Shri Haresh Shivnani in the post of Maistry in Civil engineering department is legal and justified? What relief the concerned workman is entitled to?”

1. The matter is fixed for 02.11.2023 for SP/workman's evidence. Shri K. V. Ghadia & Shri M. K. Patel Ld. Advocates are present for the First Party/employer and Shri L. M. Patil, Advocate is representing Second Party/workman's union. Ld. Counsel for the SP/workman has filed an application Ex.10 to take matter today on board and has drawn the attention of the Tribunal towards workman's withdrawal pursis dt. 14.08.2023 Ex.11 and his letter dated 14.08.2023, M-11/1 and prayed for withdrawal of the reference. First Party/employer has not opposed. Hence in the interest of justice and to expedite the disposal, the expedite application is allowed.
2. Heard on workman's withdrawal application Ex.11. The workman is permitted to withdraw his claim. The claim of the workman stands withdrawn accordingly.

Let two copies of Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 27 दिसम्बर, 2023

**का.आ. 1904.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (146/2012) प्रकाशित करती है।

[सं. एल-37011/06/2011- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 27th December, 2023

**S.O. 1904.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.146/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen.

[No. L-37011/06/2011- IR(B-II)]

SALONI, Dy. Director

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present....

Sunil Kumar Singh-I,

Presiding Officer, CGIT cum Labour Court,

Ahmedabad,

Dated 14<sup>th</sup> August, 2023

#### Reference: (CGITA) No- 146/2012

1. The Chairman, Kandla Port Trust,

Administrative Office Building,

P.B.No.50, Gandhidham,

Kutch-370201.

.....First Party

V

The General Secretary,

Transport & Dock Workers Union,

Kandla, 21, Yogesh Building,

Plot No.586/12-C, Gandhidham,

Kutch-370201.

.....Second Party

Adv. for the First Party : Shri K. V. Ghadia & Shri M. K. Patel

Adv. for the Second Party : Shri L. M. Patil

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/06/2011-IR(B-II) dated 21.09.2012 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the action of the management of Kandla Port Trust in not absorbing Shri Jeetu Shyam Nariani in the post of Maistry in Civil engineering department (compassionate appointee working as Daily Rates khalashi) although, he is fulfilling the norms of Recruitment Rules is legal and justified? What relief the workman is entitled to?”

1. The matter is fixed for 02.11.2023 for SP/workman's evidence. Shri K. V. Gadhia & Shri M. K. Patel Ld. Advocates are present for the First Party/employer and Shri L. M. Patil, Advocate is representing Second Party/workman's union. Ld. Counsel for the SP/workman has filed an application Ex.9 to take matter today on board and has drawn the attention of the Tribunal towards workman's withdrawal pursis dt. 14.08.2023 Ex.10 and his letter dated 14.08.2023, M-10/1 and prayed for withdrawal of the reference. First Party/employer has not opposed. Hence in the interest of justice and to expedite the disposal, the expedite application is allowed.
2. Heard on workman's withdrawal application Ex.10. The workman is permitted to withdraw his claim. The claim of the workman stands withdrawn accordingly.

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SUNIL KUMAR SINGH-I, Presiding Officer